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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 107

AARON TURNER, PETITIONER,

vs.

COMMONWEALTH OF PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED JUNE 11, 1948.

CERTIORARI GRANTED JUNE 21, 1948.

IN THE

Supreme Court of Pennsylvania

EASTERN DISTRICT.

January Term, 1947. No. 136.

COMMONWEALTH OF PENNSYLVANIA

vs.

AARON TURNER, alias "TREETOP",
Appellant.

RECORD

APPEAL FROM THE JUDGMENT AND SENTENCE OF THE COURT OF QUARTER SESSIONS FOR THE COUNTY OF PHILADELPHIA, AS OF JUNE SESSION, 1946, No. 646.

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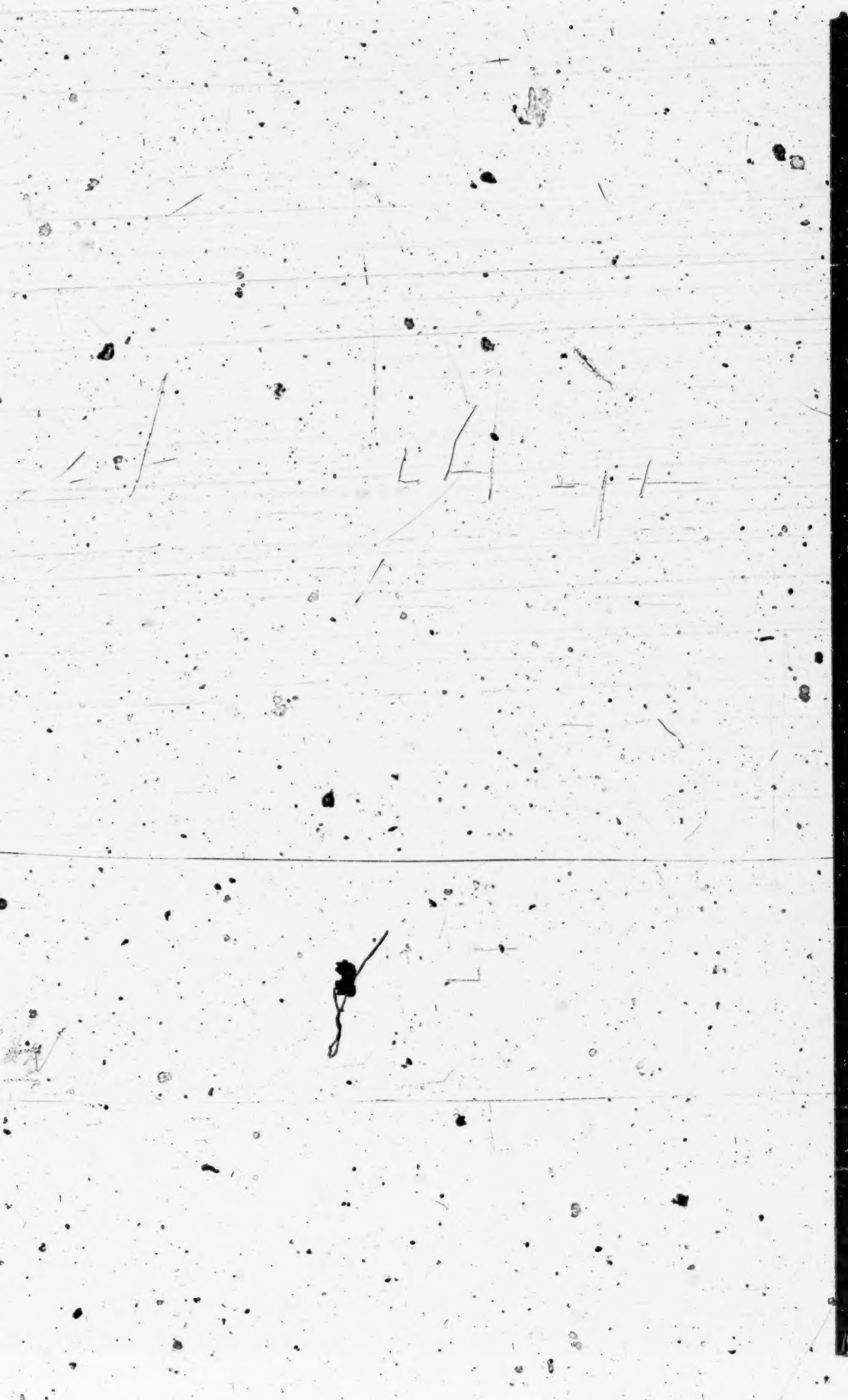

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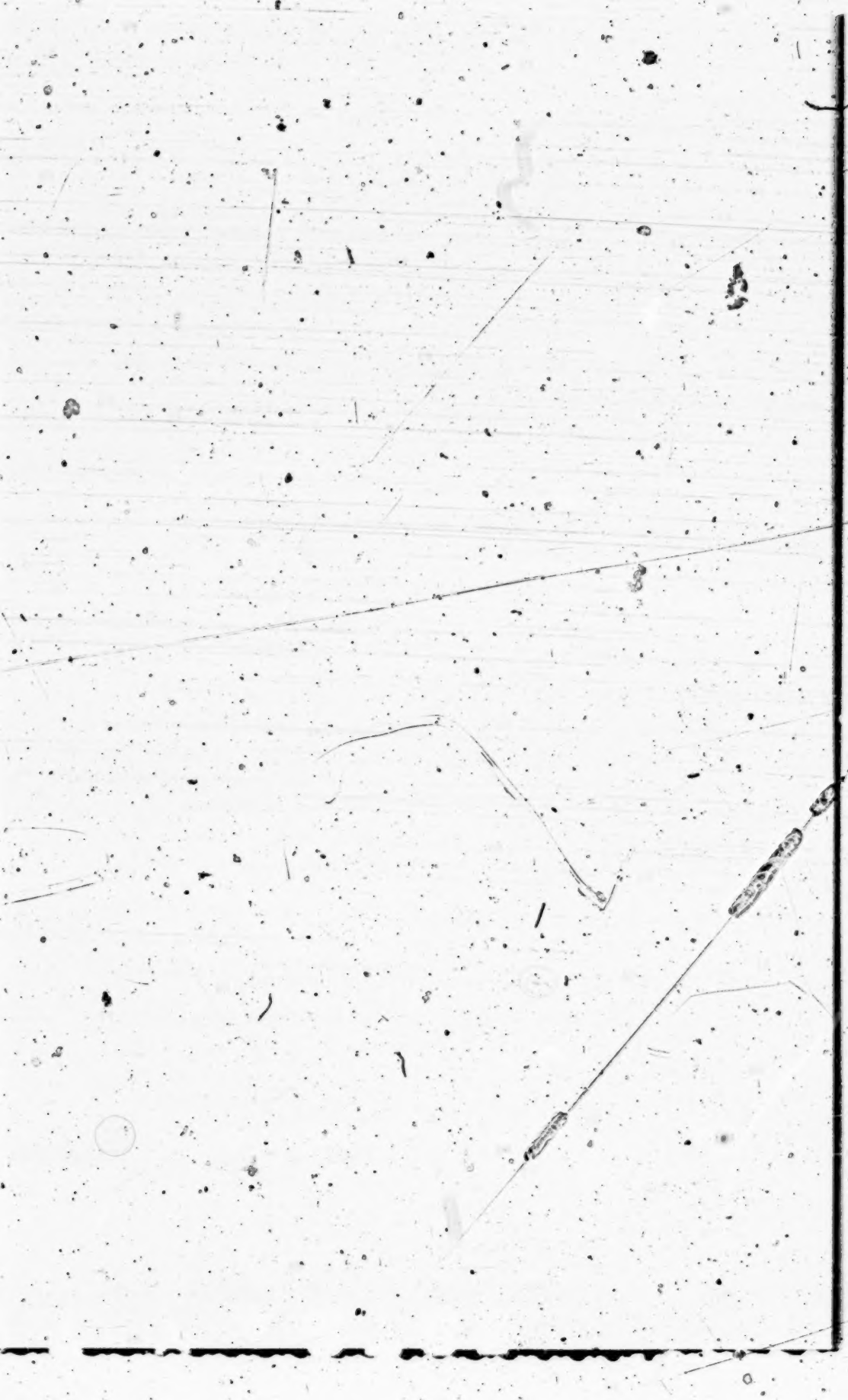

RECORD

DOCKET ENTRIES.

Murder

June 21, 1946. True bill.

June 28, 1946. Present Hon. Francis Shunk Brown, Jr., defendant Aaron Taylor present, with his counsel, upon being arraigned, pleads Not Guilty.

District Attorney replies Sim et Issue.

Same day, Defendant with his counsel, moves the Court for a continuance of the trial.

Same day, Continuance granted by the Court.

September 25, 1946. Present Hon. Frank Smith, Aaron Turner present with his counsel, said prisoner is put upon trial. Prisoner is informed that he has the right to challenge, without assigning any cause, twenty (20) jurors and all other jurors for which he can assign good and sufficient cause, whereupon a jury is called, answer, appear and sworn or affirmed and examined upon their voire dire as to their competency to sit as jurors in this case, are adjudged qualified and chosen by the Commonwealth and the prisoner as follows:

Marie W. McGlone, Mary Masha, Dorothy

Stevenson, Bertha M. Griffith, James Byrne, Frances Gallagher, John Lawler, Howard S. Anderson, Christopher Piazza, Bernice Maioniello, Myrtle Greer, John Heinzerling, Mildred Blackmore and Charles H. Wilson who were all duly empanelled, sworn or affirmed to speak the truth of and concerning this cause, are placed in charge of sworn officers trial proceeds.

September 26, 1946. Present Hon. Frank Smith, defendant with his counsel present, jury present, still in charge of sworn officers. Jury is charged by Hon. Frank Smith and thereupon retire in charge of sworn officers to deliberate upon a Verdict.

Same day, on their names being called, answer respectively. They are asked if they have agreed on a Verdict, answer and say, they have agreed. They are then asked if they find the prisoner at the bar, Aaron Turner, Guilty of the felony and Murder whereof he stands indicted or not guilty, answer and say that they find the prisoner at the bar, Aaron Turner, Guilty of Murder of the First Degree, in manner and form as he stands indicted and they fix the punishment at Death, in the manner and form provided by law; and being polled, so they say all.

September 28, 1946. Motion and reasons for New Trial, filed.

Affidavit of Counsel and Decree by Hon. Frank Smith, filed.

Decree of Court as of Sept. 30th.

October 5, 1946. The sum of Two Hundred Dollars each was paid to Edwin P. Rome and Clinton B. Palmer, Esqs., for professional services rendered.

October 16, 1946. Notes of testimony filed.

October 24, 1946. Additional reasons in support of Motion for New Trial filed.

November 26, 1946. Argument on Motion for New Trial heard and held under advisement.

March 11, 1947. Motion for New Trial, Refused.

Same day, in accordance with the verdict of the jury, the defendant is sentenced as follows "And now, this eleventh day of March 1947, the sentence of the law is that you, Aaron Turner, be taken hence by the Sheriff of Philadelphia County to the Jail of that County from whence you came, and from thence in due course, to the Western State Penitentiary in Centre County, Pennsylvania, and that you there suffer death during the week fixed by the Governor of the Commonwealth, in a building owned by the Commonwealth and erected for the purpose, such punishment being inflicted by either the Warden or deputy warden of the Western Penitentiary, or by such person as the warden shall designate, by causing to pass through your body a current of elec-

tricity of intensity sufficient to cause death and the application of such current to be continued until you are dead."

April 23, 1947. Certiorari from the Supreme Court brought into office and filed. Returnable the first Monday of June 1947.

April 30, 1947. Notes of testimony on hearing March 11, 1947, filed.

INDICTMENT.

COUNTY OF PHILADELPHIA, ss:

THE GRAND INQUEST of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Aaron Turner, alias "Treetop," late of the said County, yeoman, Clarence Lofton, late of the said County, yeoman, and Jasper Johnson, alias James Johnson, alias "Fats," alias "Playboy," late of the said County, minor on the seventeenth day of December in the year of our Lord one thousand nine hundred and forty-five, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., in and upon the body of one Frank Endres, in the peace of God and the said Commonwealth then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and he the

said Frank Endres, then and there feloniously, wil-
his
fully and of their malice aforethought, did kill and murder, contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

AND THE GRAND INQUEST aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Aaron Turner, alias "Treetop," late of the said County, yeoman, Clarence Lofton, late of the said County, yeoman, and Jasper Johnson, alias James Johnson, alias "Fats," alias "Playboy," late of the said County, minor on the fifteenth day of December in the year of our Lord one thousand nine hundred and forty-five at the County aforesaid and within the jurisdiction of this Court, with force and arms, etc., in and upon the body of one Frank Endres, in the peace of God and the said Commonwealth then and there being, feloniously, wil-
his
fully and of their malice aforethought, did make an assault, and then and there feloniously, wilfully and of their malice aforethought, did give to the said Frank Endres, one mortal wound, of which said mortal wound the said Frank Endres, from the said fifteenth day of December in the year aforesaid, until the seventeenth day of December in the same year, at the County aforesaid, and within the jurisdiction of this Court, did languish, and languishing did live, on which said seventeenth day of December in the

year aforesaid, the said Frank Endres, at the County aforesaid, and within the jurisdiction of this Court, of the said mortal wound did die. And so the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do say, that the said Aaron Turner, alias "Treetop", Clarence Lofton, and Jasper Johnson, alias James Johnson, alias "Fats," alias "Playboy," the said Frank Endres, in manner and form aforesaid, feloniously, wilfully and of their malice aforethought, did kill and murder, contrary to the form of the Act of the General Assembly, in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

his

JOHN H. MAURER,
District Attorney.

TESTIMONY.

Philadelphia, Pa., September 25, 1946.

Before: HON. FRANK SMITH, P.J. and a Jury.

PRESENT:

COLBERT C. McCLAIN, ESQ., Assistant District Attorney, for the Commonwealth.

E. P. ROME, ESQ., and C. B. PALMER, ESQ., for Defendant Turner.

G. V. P. JONES, ESQ., and W. W. WALTON, ESQ., for Defendant Lofton.

WM. N. WITZBERG, ESQ., for Defendant Johnson.

(Counsel for defendants move, and the Court orders, that the testimony be taken stenographically, reduced to typewriting, and made a part of the record, and that copy thereof be furnished to the defendants at the cost of the County.)

Discussion

MR. McCLAIN: In the case of the Commonwealth against Aaron Turner, alias "Treetop," Clarence Lofton and Jasper Johnson, alias James Johnson, alias "Fats," alias "Playboy," the Commonwealth is ready to proceed to trial for murder.

Will you bring the three defendants out?

(The three named defendants at the bar of the court.)

MR. McCLAIN: Counsel are here for each of the three defendants. They are entitled, as a matter of right, to a severance. A severance being requested, the Commonwealth elects to try Aaron Turner, represented by Mr. Palmer and Mr. Rome.

It is agreed between counsel, in the presence of the defendant, that we may read into the record the testimony of Dr. William S. Wadsworth, same to have the same force and effect as though he were here and testified.

In the cases of Lofton and Johnson, a severance being granted, they will be tried at a later date.

COMMONWEALTH'S EVIDENCE.

MRS. MARY ENDRES (309 Pemberton Street, Philadelphia, Pa.), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Madam, what relation were you to Frank Endres, the man who died in this case?

A. His wife.

Q. How old a man was your husband?

A. Sixty-three years old.

Q. You resided with him where?

A. 309 Pemberton Street.

Q. Philadelphia, Pa.?

A. Yes.

Q. After this occurrence on the 15th of December, 1945, did you go some place and identify your husband's body?

A. I went to the hospital.

Q. What hospital is that?

A. Hahnemann Hospital.

Q. How long did your husband live after his removal to the hospital?

A. He was taken there Saturday and he lived until Monday morning.

Q. The following Monday morning?

A. Yes.

Q. That would be the 17th of December?

A. Yes.

Q. Did he die the 17th of December, 1945?

A. Yes.

Q. After his death did you see his body?

A. No, sir, I did not go to the morgue but my son went.

Q. Did you see him at the hospital?

A. No.

Q. Of course, were at the funeral?

A. Yes, sir.

Q. The person who was buried, of course, was your husband whom you had always known as Frank Endres?

A. Yes, sir.

Q. I show you a key, Madam, and I ask you whether or not you recognize that key?

A. Yes, sir.

Q. What key is that?

A. My house key. That is the key to my premises.

Q. That is the key to your premises where you and your husband live?

A. Yes, sir.

Q. Do you know whether or not your husband carried that key?

A. Always.

Q. After his death when did you see that key next?

A. When the detectives brought it to my home.

Q. That was after his death?

A. Yes.

MR. McCLAIN: Cross-examine.

MR. PALMER: No questions.

BY MR. McCLAIN:

Q. Your husband worked at the Ace Broom Company?

A. Yes.

Q. Where is that?

A. 2nd and Callowhill Streets.

Q. Is the address 355-57 North 2nd Street?

A. Yes.

Q. What did he do at that company? What was his position?

A. Why, I think he was a tyer.

Q. A tyer of brooms?

A. Yes, sir.

Q. He was a maker of brooms?

A. Yes, sir.

FRANK ENDRES (309 Pemberton Street), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Mr. Endres, where do you live?
A. 309 Pemberton Street.
Q. Was Frank Endres your father?
A. That is right.
Q. Did you see his body after his death?
A. Yes, sir, at the morgue.
Q. When did you see your father's body?
A. I don't know what date it was.
Q. When did he die?
A. On Monday.
Q. Monday, the 17th of December, 1945?
A. Yes.
Q. Of course, you heard about this occurrence at the Ace Broom Company?
A. Yes.
Q. The following Monday you went to the morgue and identified your father's body?
A. Yes.
Q. You went with Dr. Wadsworth, the coroner's physician and identified your father's body?
A. Yes, sir.
Q. I show you a key and I ask you whether or not you recognize that key (indicating)?
A. That is my father's key.

Q. It was his house key, wasn't it?

A. Yes.

Q That is to 309 Pemberton Street?

A. Yes.

Q. You lived there with your father and mother?

A. Yes, sir.

MR. McCLAIN: Cross-examine.

MR. PALMER: No questions.

MR. McCLAIN: Your Honor, it has been agreed in the presence of the defendant and between counsel for the defendant and the attorney for the Commonwealth that Dr. William Wadsworth's report of the autopsy as contained on page 11 of the coroner's notes of testimony in this case may be read into evidence with the same force and effect as if Dr. Wadsworth were here. Dr. Wadsworth is ill at this time.

"Report of autopsy. Philadelphia, Pa.. December 17, 1945.

Name: Frank Endres. Sex, male. Age 60. Color, White, Married. Residence: 309 Pemberton Street. Date of death: 12/17/45. Post Mortem at Morgue, 12/17/45. Identification, Gus and Frank Endres. External Examination: Marks: Head through back of left eye, gash. Comminuted vortex with split on left side and hemorrhages. Internal Examination: Chronic changes. Cause of death: crush of skull. Signed William Wadsworth, M. D."

OFFICER DAVID ALEXANDER MONAGHAN (No. 2338), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Officer Monaghan, you are connected with the police department in the city and county of Philadelphia?

A. Yes.

Q. You are a patrolman?

A. Yes, sir.

Q. Where is your beat or where was it on the 15th of December, 1945?

A. Delaware Avenue to 6th Street and from Vine to Callowhill Streets.

Q. Did the premises 355-357 North 2nd Street, those of the Ace Broom Company, lie within your beat?

A. Yes.

Q. I direct your attention to Saturday afternoon, December 15, 1945, shortly after five o'clock p. m. What did you do in connection with the premises of the Ace Broom Company and what did you find and what did you see? Talk so that the last gentleman in the jury box can hear you.

A. About five o'clock this evening of December 15, I tried the door of the Ace Broom Company and it opened. Upon going in there I saw the bodies of two

men lying there. First I noticed the dead one and I had left another officer a minute before and I called to him to get the emergency wagon to have them removed to the hospital.

BY THE COURT:

Q. Where were they lying?
A. A few feet in, maybe five feet.
Q. On the first floor?
A. Yes.
Q. Near the door?
A. That is right.

BY MR. McCLAIN:

Q. What body did you see first, Officer? Was it Endres?
A. Mr. Simmons' body.
Q. Were these two people alive?
A. Mr. Simmons was alive but he was not conscious. He tried to move.
Q. Did you notice any injuries about either or both of these men?
A. They were in pools of blood and beaten about the head.
Q. Who was the officer that you had left?
A. Officer James Kelly.
Q. Did he come back with you?
A. He went to the nearest call box and ordered

the wagon and he came back before the wagon arrived.

Q. What did you do?

A. We assisted the men on the emergency cars and first we moved Mr. Endres because his body seemed lifeless and the second wagon arrived and later we assisted in taking Charles Simmons to the hospital.

Q. Did you go with the bodies to the hospital?

A. No, sir.

Q. Is there anything else which you did at the scene that you can tell us about?

A. No, sir. I waited until the detectives came shortly and from there they took over.

Q. That ended your connection with the matter?

A. Yes, sir.

MR. McCLAIN: Cross-examine.

MR. PALMER: No questions.

OFFICER JAMES KELLY (No. 1523), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Officer Kelly, did you go to the premises at 355-357 North 2nd Street in the city and county of Phila-

delphia some time after five o'clock p. m., on Saturday, December 15, 1945?

A. Yes, sir.

Q. You were summoned there by whom?

A. Officer Monaghan.

Q. What did you see when you went into those premises and what did you do in consequence of what you saw?

A. When I got into the door I seen Officer Monaghan and these men and they were stretched out on the floor about five feet inside the door. I waited there until the wagon came and assisted Officer Monaghan to put Mr. Endres in the first wagon and Mr. Simmons in the second wagon.

Q. What was the condition of Frank Endres as you saw him?

A. Well, I thought he was in the worst condition and that is why I sent him first. He was unconscious and lying in a pool of blood.

Q. Blood from where?

A. The head.

Q. What was the condition of Mr. Simmons?

A. Mr. Simmons was trying to move at that time and he was in a pool of blood. Before we got the wagon Mr. Simmons got to one knee and I put him back.

Q. Where was Mr. Simmons bleeding from?

A. The head.

Q. After the two victims were removed did you remain at the premises?

A. For a short while on the outside until the detec-

tives came there and I stayed there so that nobody else would get in there.

MR. McCLAIN: Cross-examine.

MR. PALMER: No questions.

BY MR. PALMER:

Q. How did you know that this was Mr. Endres and Mr. Simmons?

A. Well, Mr. Simmons has been in business on that beat—I am on the adjoining beat and I know him and I have seen him there. I also knew Mr. Endres to see.

BY MR. McCLAIN:

Q. It was Mr. Simmons' business?

A. Yes, sir.

Q. Mr. Endres worked for him?

A. Yes, sir.

OFFICER STANLEY J. LAKA (3119), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Officer Laka, on December 15, 1945, about five o'clock p. m., did you go to the premises of the Ace Broom Company at 355 North 2nd Street, Philadelphia, Pa.?

A. Yes.

Q. What did you do there?

A. Why, 215 emergency wagon received a call about 5:10 and we got there to the premises at 355 North 2nd Street and there was these two men lying there, Mr. Simmons and Mr. Endres. Mr. Endres seemed to be lifeless and was just lying there and we took him first. We took him to the Hahnemann Hospital and Dr. Brown said that it looked like a possible fractured skull.

Q. What did you do with the body of Mr. Simmons?

A. That was Mr. Endres.

Q. What did you do with Mr. Simmons?

A. There was another wagon there.

Q. Did you go back to the premises after you took Mr. Endres to the hospital?

A. No, sir.

CROSS-EXAMINATION.

BY MR. PALMER:

Q. Officer Laka, how do you know that this was Mr. Endres?.

A. I was right—well, right, offhand we did not know it but later—we knew Charles Simmons because he was a heavy-set man and we found out that the other man was Endres.

Q. How did you know that?

A. He worked for him and we found out, and his daughter was in the hospital later on and we spoke to her.

Q. At the time you picked him up you did not know who it was that you picked up?

A. No, sir, I would not know. He had nothing on him to identify him.

OFFICER PHILIP POURRON (4007), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Officer Pourron, on Monday, December 17, 1945, did you go to the Hahnemann Hospital?

A. Yes, sir.

Q. That was as a consequence of orders received from the police department?

A. Yes.

Q. What did you do there?

A. I got a notice there at the office to get a body by the name of Frank Endres.

Q. Was it dead or alive?

A. Dead, and I took him to the morgue.

Q. That ended your connection with the matter?

A. Yes, sir.

MR. McCLAIN: Cross-examine.

MR. PALMER: No questions.

DETECTIVE DANIEL O'MAHONEY (No. 21), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Detective O'Mahoney, you are connected with the Homicide Squad of the city of Philadelphia; is that correct?

A. Yes, sir.

Q. When was Aaron Turner arrested?

A. On June 3, 1946, about eleven o'clock in the morning, at 12th and South Streets.

Q. Did you make an investigation of this death of Frank Endres and Charles Simmons at the Ace Broom Company, 355-57 North 2nd Street?

A. I was assigned to this case and accompanied by Detective Thompson and by Lieutenant Kelly on the 3rd of June—as the result of instructions which he gave Thompson and I, we went to 12th and South and took into custody Aaron Turner, also known as Treetops.

Q. Is that this defendant?

A. Yes, sir. I did not know him but Detective Thompson did know him. We brought him to the office of the Homicide Division and talked to him. We talked to him for several days concerning the case of Mr. Endres and Mr. Simmons.

Q. When was Clarence Lofton arrested?

A. He was arrested on the 24th of May, 1946, at one o'clock a. m.

Q. When was Jasper Johnson arrested?

A. Jasper Johnson was arrested on June 3, 1946, in the afternoon, about four-thirty, also at 12th and South Streets, on the highway.

BY THE COURT:

Q. What day?

A. The 3rd of June, the same day as Aaron Turner.

Q. At the same time?

A. No, sir, in the afternoon. It was four-thirty o'clock.

BY MR. McCLAIN:

Q. Detective O'Mahoney, do you have any records there of the detectives who were first on the scene on December 15, 1945?

A. Detective Fisher and Detective Lemmon made the original investigation in this case, sir. Also Sergeant Riccardi.

Q. Now, Detective O'Mahoney, following the arrest of these three men did you in your capacity of a detective of the Homicide Squad have these three men together?

A. Yes, sir, ~~we~~ did.

Q. Did you take a statement?

BY THE COURT:

Q. When was that?

A. We obtained a statement, a signed statement, from the defendant, Aaron Turner, in the presence of Clarence Lofton and Jasper Johnson, on Saturday morning, June 8, 1946.

BY MR. McCLAIN:

Q. Were there any threats made to Aaron Turner or to Clarence Lofton or Jasper Johnson, or any promises made to Aaron Turner, Jasper Johnson or Clarence Lofton before this statement was taken?

A. No, sir, no threats made and no promises given.

Q. Was it a voluntary statement?

A. Yes, sir.

Q. Was it signed in the presence of yourself by the defendant Aaron Turner, also known as Tree-top?

A. Yes, sir.

Q. Was it also signed in your presence by Jasper Johnson?

A. Yes, it was.

Q. Was it also signed in your presence by Clarence Lofton?

A. Yes, sir.

Q. Were each of the pages signed by these three men?

A. Each of the pages was signed by the three men.

Q. The statement was taken by a stenographer, by a police stenographer?

A. Yes, sir.

Q. After it was taken and reduced to typewriting was it produced to Aaron Turner, this defendant?

A. Yes, sir.

Q. Did he read it?

A. Yes, sir.

Q. Before he signed it?

A. Yes, sir.

Q. Will you read that statement to the Court and jury?

BY MR. PALMER:

Q. When did you pick Aaron Turner up on June 3rd?

A. It was between 10:30 and 11:00 o'clock on the morning of June 3rd, 1946.

Q. Who was with you at that time?

A. Detective Nathaniel Thompson, 1st Detective Division.

Q. When you picked him up, immediately what did you do with him? Did you put him in any car?

A. Yes.

Q. Did you ask him any questions then?

A. Yes, sir, we did.

Q. What questions did you ask him?

A. We asked him if he was known as Treetop, and he said, "Yes, you know me, Mr. Thompson."

Q. What other questions did you ask?

A. We asked him if he was in the service and he said no, and I said, "You were not in the service?" He said, "No." He said, "Why?"

I said, "Well, we will take you to City Hall because somebody up there wants to see you."

Q. You took him to City Hall?

A. Yes.

Q. What time did you get to City Hall?

A. Oh, I guess about 11:15 or 11:20.

Q. Where did you take him?

A. We took him first into the office of the Homicide Division.

Q. Where was that?

A. The first floor, 110 City Hall in the rear.

Q. Then you took him where?

A. To the cell room on the 6th floor in City Hall.

Q. Where else was he taken besides City Hall during the time he was in the custody of the police?

A. Well, he was sent to the First Detective Division but I did not take him there.

Q. Where is that?

A. 15th and Snyder Avenue.

Q. When was that?

A. I don't know the exact date.

Q. Didn't you see him down there?

A. Yes, sir.

Q. How long was he kept down there?

A. Probably a day.

Q. When was he taken before the magistrate?

A. He was taken before the magistrate on June 8.

Q. What time of the day was it?

A. I believe it was about ten-thirty, sir.

Q. Officer, you are familiar with the law requiring you to take the defendant before a magistrate? Why wasn't the defendant taken before a magistrate the day that you picked him up?

A. We had a lot of questioning to do.

Q. You mean he did not give you the answers which you wanted from him? Is that why you did not take him to a magistrate?

A. He did not give us the answers that somebody else told us he could give.

Q. He did not give you the answers the right way?

A. Yes, sir.

Q. Is that why you did not take him to a magistrate the next day, which was the 4th?

A. Yes.

Q. How about the next day, on the 5th?

A. Yes, sir.

Q. He still did not give you the answers that you wanted?

A. No, sir.

Q. How about the 6th, on Thursday? Is that why you did not take him before a magistrate, because he did not give you the right answers?

A. He did not give us the answers to the questions that other people told us he could give.

Q. The same thing is true as to the 7th?

A. Yes, sir. On the 7th, that is when he said he wished to tell the truth.

Q. Just answer the question.

MR. McCLAIN: Your Honor, he has answered the question.

BY THE COURT:

Q. What did he say on the 7th?

A. He said he wanted to tell the truth and that what the other two men had told us about him was true and he would tell us all about it. He said, "I was at the broom factory and I struck two men with a piece of iron and on the 7th he also indicated, sir

---

Q. Don't tell us that. That is a conclusion. What did he say?

A. Well, he used a piece of paper as an instrument

and struck one of the detectives, Detective Carey, on the back of the head to show just how he had struck these two men in the broom factory.

BY MR. PALMER:

Q. Was he at any time during this period allowed to see an attorney, Officer?

A. Well, when he was with me he was not.

Q. He was not?

A. He did not ask me about any attorney. I only talked to him so many hours a day and night.

Q. How many hours did you talk to him?

A. I can't say that. On the first day I talked to him about three hours.

Q. What about the next day?

A. I think I was with him for three hours.

Q. How about the fifth?

A. Maybe four, and the next day maybe three. I did not time myself. Whatever time I had I went there and talked to him.

Q. How many other people talked to him during this time?

A. Well, Detective Fisher questioned him in my presence and while he was talking to him I was there and Detective Carey, he was there and sometimes Detective Lennon was there and Sergeant Riccardi was there and Detective Thompson was there and Lieutenant Kelly took an active part in the questioning of this man.

Q. Were these questionings to your knowledge done while all these detectives were in a group or by relays? In other words, did a couple talk to him for

a couple of hours at a time and then he was talked to by somebody else?

A. There was only one time that he was out of the cell and another time I had to get the necessary —I had to take the necessary paths to get him out to talk to him.

BY THE COURT:

Q. The question is did you sit around in a circle and question him?

A. Oh, no, sir.

Q. How was it done?

A. Well, in one case one time I obtained a pass to see him in the cell room, and I took him out. Detective Thompson and I were there. Another time Detective Carey and Fisher and I talked to him. Another time Lieutenant Kelly talked to him in my presence and in the presence of Sergeant Riccardi.

BY MR. PALMER:

Q. This time when you took him out of the cell, where did you take him?

A. In some room and we talked to him.

Q. What kind of room?

A. Well, the doctors use it. It is not a big room but it is about twelve by twelve.

Q. What kind of furniture does it have?

A. A desk and two chairs and a medicine cabinet and sink.

Q. Does it have an outside door into the corridor or is it a back room?

A. It leads into the desk in the cell room.

Q. Was Turner at any time while he was in the custody of the police allowed to get in touch with his friends or relatives?

MR. McCLAIN: If your Honor please, that is a rather general question.

BY THE COURT:

Q. Did he ask you?

A. He never asked me, your Honor, no, sir.

BY MR. PALMER:

Q. Did you ever tell Turner anything he might say could be used against him?

A. Yes, sir.

Q. When did you tell him that?

A. On the night that he said he wanted to tell the truth.

Q. Is that the first time?

A. That is the 7th of June.

Q. Is that the first time you told him that?

A. I believe it was the 7th, yes.

Q. Officer, were you present at the magistrate's hearing?

A. Yes, sir.

Q. What other detectives and officers were present?

A. Detective Fisher and Detective Lennon and Detective Carey and Detective Thompson and Detective Sergeant Riccardi.

Q. In each part some officers did question him during the week; is that right?

A. Yes, sir.

Q. During the questioning of these men a week, after he was picked up did you ever question him at night?

A. Yes, sir.

Q. Frequently?

A. No, sir, I think on two nights.

Q. Which nights are they?

A. I questioned him on the night we brought him in and that was the third, and I questioned him again on the night of the 7th.

Q. From when until when did you question him?

A. Maybe about from eight until ten-thirty.

Q. On both occasions?

A. Yes, sir. I did not time myself.

Q. I said on both occasions?

A. I might have stayed a little later on the first occasion, maybe until eleven o'clock.

Q. When was Aaron Turner booked?

A. Aaron Turner was slated or booked, as you say, on the 4th, on the morning of the 4th for questioning in this case.

Q. Why was he taken to the police station at 15th and Snyder Avenue?

A. Well, that is on orders of Lieutenant Kelly to have two other men confront him.

Q. The two men, Clarence Lofton and Jasper Johnson had already been arrested?

A. Yes.

Q. Weren't they at City Hall?

A. At this time they were at 15th and Snyder Avenue. If your Honor will permit me ——

BY THE COURT:

Q. When was it that they were at 15th and Snyder Avenue?

A. On the 7th.

BY MR. PALMER:

Q. That was the day before the magistrate's hearing?

A. Yes, sir, and there are others—other men that we had in custody that we also had down there. In fact, we had quite a few men in there.

Q. Are you sure it was on the 7th?

A. It may have been the 6th or the 7th.

Q. When did Mr. Turner sign this sheet of paper?

A. On the morning of the 8th of June, 1946.

Q. About what time of the day was it?

A. About ten o'clock.

Q. Ten o'clock?

A. Or 10:15.

Q. About 10 or 10:15?

A. After it was made up and transcribed.

Q. How long was he questioned just before he signed this paper—that is, the questioning?

A. Well, I had talked to him and questioned him from the time he was brought in which was the morning of the 3rd of June until ——

BY THE COURT:

Q. Answer the question. How long was he questioned?

A. Every day.

Q. Of the morning? How long was he talked to that morning?

BY MR. PALMER:

Q. Before he signed the sheet of paper that morning—how long before he signed the sheet that morning was he talked to and questioned?

A. Well, I can't say how long. The statement was made there verbally. He told us the night before.

Q. How many hours?

A. It was not an hour.

Q. About a half hour?

A. Not an hour.

Q. Was it a half hour?

A. I would say a half hour, yes.

Q. Officer, isn't it a fact that Turner was threatened and beaten before he signed this thing?

A. No, sir.

Q. Isn't it a fact that you kicked him on the third and fourth?

A. That is not true, Mr. Palmer, I did not do that.

Q. Officer, when was Turner taken to the county jail?

A. I would say on the 8th, after the hearing, to the best of my knowledge.

Q. Was it on the 8th?

A. To the best of my knowledge, sir.

Q. Would you be surprised if you knew that it was a later date?

MR. McCLAIN: I object to that.

THE COURT: Let him answer the question. I will grant you an exception.

BY MR. PALMER:

Q. Did you see Turner after the magistrate's hearing?

A. No, sir.

Q. This is the first time you have seen him since?

A. Oh, I was down to the County prison to see him.

Q. You did not see him before he went to the County prison but afterwards?

A. No, sir, I don't have any recollection of it.

[1][BY MR. McCLAIN:

Q. Now, will you read that statement to the jury?

MR. ROME: Your Honor ——

THE COURT: I will not have two attorneys trying this case at the same time. It is too confusing. Make up your mind which one of you will try this case.

MR. ROME: Mr. Palmer will conduct the examination. I want to make an objection at this time to the reading of that statement.

THE COURT: Let us have one attorney examining in this case so that it will not confuse the jury. Now, you are objecting to the admission of this statement?

MR. ROME: Yes, sir.

THE COURT: I will overrule your objection and grant you an exception.

MR. ROME: I want to bring to your Honor's attention certain rulings of law.

THE COURT: I am ruling here and I have made my ruling.

BY MR. McCLAIN:

Q. Now, Detective, will you read that statement?

A. "Statement of Aaron Turner, alias Treetop, 26 years, colored, 720 South Marvine Street.

Made in the presence of Detective Lieutenant Kelly, Homicide Squad, Detective Sergeant Samuel Riccardi #2, Homicide Squad. Detectives: Thomas Lennon #223, Homicide Squad, Daniel O'Mahony #21, Homicide Squad; John A. Carey, #4024, Homicide Squad; Wesley Fisher #41, 2nd Detective Division; N. R. Thompson #191, 1st Detective Division; And: Clarence Lofton, 34 years, colored, 412 South 15th Street; Jasper Johnson, alias "Fats", 18 years, colored, 620 South 13th Street.

At: Central Cell Room (Room 637, City Hall, at about 9:45 to 12 Noon, Saturday, June 8, 1946.

Stenographer: Joseph J. McGonigle, Homicide Squad.

Interrogation by: Detective Sergeant Samuel Riccardi #2, Homicide Squad.

"Q. What is your name?

A. Aaron Turner.

Q. How old are you?

A. 26.

Q. Where do you live?

A. 720 So. Maryine St.

Q. Do you know why you have been arrested?

A. Yes, for murdering those two men in the broom factory.

Q. You understand that anything that you say in this statement or any one that you mention can and will be used against you at the time of trial in court. Do you understand that?

A. Yes.

Q. Have any promises been made to you to make this statement?

A. No.

Q. Have you been threatened or abused, in any manner in order to bring about this statement?

A. No.

Q. Tree-top, go on in your own way and tell us exactly what part you took in the homicide of Charles Simmons and Frank Endres, which occurred at about 5:00 P. M., on December 15, 1945, inside the broom factory at 355 North 2nd Street.

A. One day early in December, 1945, I was down on Dock Street. I heard somebody down there say there was a big broom building down there on Second Street and Callowhill and they were cheaper down there than anybody else so I went up there the Thursday before that three of us went up there on that Saturday, and looked the place over.

Then on Saturday (December 15, 1945) I met Clarence at 12th and South and Fats at 12th & Bainbridge in the saloon. I said we have a job to do and they went with me and we went down to 5th and went up to 2nd and Market Streets and we left 2nd and Market Streets and went on around to the broom building and then when we got around to the broom building me and Fats went in and Clarence stayed outside and then we went in the door together into the office. Fats was in back of me and when we passed in the second door we met the man and I hit him the man with a piece of iron

which I had wrapped up in a piece of newspaper and Fats went through his pockets.

Then I went in through the door and this other man in there and then I hit him over the head with the piece of iron and then I got his wallet and went out. Then we came out and went to 8th and Callowhill Streets and we had a few drinks.

Along in the street somewhere we spilt up the money. Fats gave me some money and I gave Clarence $87.00 and I got about $175 for my share.

We went to 8th & Callowhill and had a few drinks. Then we got a car and went on down to South Street and went to 12th and South and had a few drinks and went to 12th and Bainbridge and that is where we split up. We said that nobody knows nobody if we got arrested.

Q. When you say you looked the place over, the broom factory, located at 355 North 2nd Street, what did you have in mind?

A. I figured it was quiet around there and I figured it was easy money to rob.

Q. That day after, you looked the place over, which was the broom factory located at 355 North 2nd Street, what did you do next?

A. I didn't do nothing that Thursday.

Q. What day did you decide to rob this place at 355 North 2nd Street?

A. The very next Saturday.

Q. With whom did you conspire to rob this place?

A. With these boys—Fats and Clarence.

Q. What became of the weapon that you used in

the beating of these two men, namely, Frank Endres and Charles Simmons?

A. I threw it away, sir, I couldn't say where.

Q. Can you describe this weapon that you used on December 15, 1945?

A. It was a piece of iron. It was about 11 inches long, 2½ inches wide ½ inch thick. It had a hole in the end.

Q. How many times did you hit the white men over the head when you entered the premises at 355 North 2nd Street on December 15, 1945, at about 5:00 P. M.?

A. I hit the first man twice and I seen Fats get his wallet from him.

Q. How many times did you hit the second man?

A. I only hit him a couple of times and he went down and I went into his pockets and his wallet and took the wallet and went out with it. There was something over $100.00. I don't know how much. I threw it away while walking out Callowhill Street.

Q. How much money did you give Clarence Lofton?

A. $87.00.

Q. How much did you give Jasper Johnson, alias Fats?

A. I didn't give him any money. He said he got $50.00.

Q. How much money did Jasper Johnson give you?

A. I don't know how much he gave me but I gave Clarence $87.00, out of it and I kept $75.00.

Q. When and where did Jasper Johnson get that money?

A. He got it off the man I hit first.

Q. What did you do with the weapon that you beat these two men over the head with on December 15, 1945, at 355 N. 2nd St.?

A. I put it back in my pocket and then I brought it out when I got three or three and a half blocks away and I threw it away.

Q. Why did you throw the weapon away after the robbery?

A. Because I could get another one.

Q. Did Fats (Jasper Johnson) strike either of these men at any time?

A. No, sir.

Q. Can you read and write?

A. I can read pretty good.

Q. Is there anything else that you wish to add to this statement?

A. No.

Q. Is everything else that you wish to add to this statement?

A. No.

Q. Is everything that you have told us the truth?

A. Yes."]'

BY MR. McCLAIN:

Q. Is each page of that statement signed?

A. Yes, sir, by the three defendants.

Q. Were you present when those signatures were taken by each of these men on each of those pages?

A. Yes, sir.

Q. Detective, did you also take a statement from Jasper Johnson, known as Fats?

A. Yes, sir.

Q. In the presence of Aaron Turner?

A. Yes, sir.

Q. And in the presence of Clarence Lofton?

A. Yes, sir.

Q. Did you also take a statement from Clarence Lofton in the presence of this defendant and Jasper Johnson?

A. Yes, sir.

Q. Did Aaron Turner, this defendant, sign Jasper Johnson's statement?

A. Yes, sir, he did.

Q. Did he sign each page of the statement?

A. Yes, sir.

Q. Did this defendant, Aaron Turner, sign Clarence Lofton's statement?

A. Yes, sir, he did.

Q. Each page of it?

A. Yes, sir.

Q. In your presence?

A. Yes, sir, in my presence.

Q. Did Jasper Johnson also sign Clarence Lofton's statement?

A. Yes, sir.

Q. Did Clarence Lofton also sign Jasper Johnson's statement?

A. Yes, sir.

[2]Q. Now, I ask that you read to the Court and jury the statement made first by Jasper Johnson in the presence of this defendant which was also signed by this defendant and by Johnson who made it and also by Clarence Dofton, who was present.

MR. ROME: If your Honor please, I object to the reading of this statement. In the first place it appears that this man Turner was held by the police for five days without having been brought before a magistrate and he was moved around from place to place and he at no time was given a lawyer.

THE COURT: That is purely argumentative. I will overrule your objection and grant you an exception.

BY MR. McCLAIN:

Q. Now, read first the statement made by Jasper Johnson.

A. "Statement of Jasper Johnson, 18 years, colored, 620 South 13th Street, alias 'Fats'.

Made in the presence of: Detective Lieutenant James. A. Kelly, Detective Sergeant Samuel Riccardi, #2, and Detective Thomas Lennon #223, Detective Daniel O'Mahony #44, and John Cary #4024, all of the Homicide Squad. Detective N. R Thompson #184, 1st Detective Division, and Detective Wesley Fisher #41, Second Detective Division.

and: Clarence Lofton, 34 years, colored, 412 South 15th Street. Aaron Turner, 26 years, colored, 720 South Marvine Street, 'Tree-top.'

"At: Central Cell Room (Room 637, City Hall), at about 10:12 A. M., on June 8, 1946.

"Concerning: The homicide by blunt instrument of Charles Simmons, 52 years, white, and Frank Endres, 62 years, white, which occurred at inside of Ace Broom Factory at about 5:00 P. M., on Saturday, December 15, 1946.

Stenographer: Joseph J. McGonigle, Homicide Squad.

Interrogation by: Detective Sergeant Samuel Riccardi #2, Homicide Squad.

"Q. What is your name?

A. Jasper Johnson.

Q. How old are you?

A. 18.

Q. What is your address?

A. 620 South 15th Street.

Q. Do you know why you have been arrested?

A. Yes, for my part in killing the two men in the broom factory.

Q. You understand that anything you say in this statement or anyone that you may mention can and will be used against you and anyone that you may mention at the time of trial in court. Do you understand that?

A. Yes.

Q. Have you been promised anything to make this statement?

A. No.

Q. Have you been abused in any way or threatened in any manner to bring about this statement?

A. No.

Q. Go on in your own way and tell us just what part you took in the deaths of Frank Endres and Charles Simmons, which occurred December 15, 1945, at 355 North 2nd Street.

A. On Saturday afternoon about the middle of December, 1945, Tree-top and Clarence came to 12th & Bainbridge at Pearl Harbor and Tree-top calls me and says 'Come on, go with me.' I asked him where he was going and he said, 'We are going to get some money.' I asked him, 'What way are you going to get to the money' because I didn't want no trouble. He says to me, 'It is no trouble, come on. So I goes along. We goes to 12th & South and we goes down South Street. We stopped down South Street at a hot dog stand by the name of Hot Dog Heaven, between 5th & 6th on South.

We got a couple of sandwiches apiece. I had been drinking pretty heavy. We goes on down to 2nd Street. We goes to 2nd & Market Streets. Clarence says, 'Tree-top, how much farther we got to go? If we have much farther we can catch a trolley.' Tree-top says, 'Clarence, we don't have much farther to walk.' We goes to 2nd & Callowhill.

Tree-top says, 'Clarence, stay on the outside for look-out.' We were at the broom factory then when he said it. He says, 'Fats, come on in with me.' Tree-top goes in the first door. We goes to the next door,

two doors right there, something like a little lobby. After we got to this door (indicating to photograph of office door enclosure entrance) we were met by the smallest fellow, a middle aged man. Tree-top slugged him on the side of the head. The fellow was on the floor scuffling, trying to get up. I runs in his pocket pulls out a wallet out of the hip pocket. I looks in the wallet, sees money and takes the money out. I slings the wallet somewhere in the building but I don't know where. I looks around to see Tree-top and the other man. He was on the floor and Tree was over him. He had done slugged him. I said, 'Tree, Let's go,' but I didn't call no name.

I goes out running. Tree runs behind me. Clarence follows Tree. We goes near 8th & Callowhill Streets. I looks at the money. I didn't count it. I imagine it was around $175.00. I takes $50 and gives the rest to Tree. I says, 'Tree-top, give Clarence some money' but I don't know how much.

After he gave Clarence money I says to Tree, 'What did you get off the other guy?' He says, 'Nothing'. We goes in the beer saloon at 8th & Callowhill and gets a couple of big shots apiece. Tree goes into the bathroom and he comes out and Clarence says, 'Tree, let's get another shot.' Tree said, 'No, we got enough, let's go.' We catches the 8th Street trolley and came right down to South. We stops at 12th & South, got a couple of shots in there. We left out of there and went in Pearl Harbor at 12th & Bainbridge and that is when we split up.

Q. When you, Tree-top and Clarence Lofton, on

December 15, 1945, at about 5:00 P. M., entered the broom factory at 355 North 2nd Street, did you see any weapon of any kind in Tree-Top's hand?

A. I seen something wrapped up in a newspaper but I don't know what it was. It was something (indicating about 8 inches). It was very wide (indicating about ¾ of an inch).

Q. Was that the weapon that you saw Aaron Turner, alias Tree-top strike both men over the head with at 355 North 2nd Street, December 15, 1945?

A. Yes, sir.

Q. How many times did you see Aaron Turner alias Tree-top strike either of these men over the head?

A. I am not positive. It was more than once. I don't know how many times.

Q. On December 15, 1945, after you, Clarence Lofton and Aaron Turner, alias Tree-top, robbed these two men what conversation did you have between yourselves?

A. We agreed that if anybody got arrested we didn't know nobody. I don't know you and you don't know me. When we got on the outside just before we split up the money Tree-top says, 'One of the fellows was no trouble but the largest one he had to give a hell of a blow.'

Q. Did you, at any time, during the course of the robbery have any weapon or strike either of these two men?

A. No, sir.

Q. How long have you been friendly with Clarence Lofton?

A. About a couple of years. We have always been friends.

Q. How long have you known Aaron Turner, alias Tree-top?

A. About 1½ years and we have always been friendly.

Q. Can you read and write?

A. Yes, sir.

Q. Is everything you have told us the truth?

A. Yes.

Q. Is there anything else that you wish to add to this statement?

A. No, sir."

BY MR. McCLAIN:

Q. Is that signed on each page?

A. Yes, sir.

Q. Now, will you read the statement made by Clarence Lofton?

MR. ROME: I object to that also, your Honor.

THE COURT: I will overrule your objection and grant you an exception.

BY MR. McCLAIN:

Q. Go ahead and read that statement.

A. "Statement of Clarence Lofton, 34 years, colored, 412 South 15th Street.

Made in the presence of: Detective Lieutenant James A. Kelly, Detective Sergeant Samuel Riccardi, Detectives Lennon #223, O'Mahony #44 and Cary #4024, Homicide Squad. Detective N. R. Thompson #184, 1st Detective Division and Detective Wesley Fisher #41, 2nd Detective Division, and: Jasper Johnson (alias Fats), 18 years, colored. 620 South 13th St., Aaron Turner (Alias Tree-top), 26 years, colored, 720 South Marvine Street.

At: Cell room, Room 637, City Hall, at about 9:45 A. M., June 8, 1946.

Concerning: The homicide of Charles Simmons, 52 years, white, and Frank Endres, 62 years, white, which occurred inside Ace Broom factory, at about 5:00 p. m., on December 15, 1945.

Stenographer: Joseph J. McGonigle, Homicide Squad.

Interrogation by: Detective Sergeant Samuel Riccardi, #2, Homicide Squad.

"Q. What is your name?

A. Clarence Lofton.

Q. How old are you?

A. 34.

Q. What is your address?

A. 412 South 15th Street.

Q. Do you know why you have been arrested?

A. Yes, sir. On account of this crime. For this broom job; the two men killed in the broom factory.

Q. You understand that anything you say in this

statement or anyone that you may mention can and will be used against you and anyone you may mention at the time of trial in court. Do you understand?

A. Yes.

Q. Have you been promised anything to make this statement?

A. No.

Q. Have you been abused in any way or threatened in any manner to bring about this statement?

A. No.

Q. Clarence, go on in your own way and tell us in your own words just what part you took on Saturday afternoon, December 15, 1945, at 355 North 2nd Street where Charles Simmons and Frank Endres was beaten and robbed.

A. The day the crime was committed it was a Saturday afternoon. It was in the middle part of December. So Tree-tops (Aaron Turner) he come to me and says, 'Come on, go with me.' We left out of there and goes to 12th & Bainbridge and he goes to this boy "Fats" (Jaspar Johnson). We left out of there and go on back up South Street. We goes on down South Street, stopped at a hot dog stand got some sandwiches around 5th & South. We left there, walked on down to Second Street. We goes to 2nd & Market Street and asked Tree-top how much further we got to go. Tree-top said he had a job to do. He said he was going to get some money so we goes to the place at 2nd & Catlowhill Streets. He told me to stay outside and watch so him and

Fats went on in. Fats and Tree-top went in. They were in there 25 or 30 minutes. So Fats came out running and after a bit Tree-top came out running. So I runs behind them. So we goes on up to 8th & Vine and Fats gave Tree-top some money. So Tree-top gave me $87.00.

We goes to a saloon at 8th & Callowhill and we had two double shots of whisky each. Tree-top goes in the bathroom. So when he comes out, I said, 'Let's get another drink' and he says, 'No, we got enough, let's go.' So we get a trolley came on back down South Street. We goes in (CL) Pearl Harbor —12th & Bainbridge. That is when I left out of there. That is all I know.

Q. When you say that Tree-top came to you and told you that he had a job to do to get some money, what did he mean?

A. At the time I didn't know what he meant, if he was going to rob somebody or place and later we found out what he meant.

Q. When you met Tree-top and he told you that he had a job to do what kind of weapon did he have?

A. A piece of sash weight about 8" long. I seen him wrap it in paper. He always carried a piece in his pocket.

Q. Before Aaron Turner (alias Tree-top) and Jaspar Johnson (alias Fats) and you entered the premises at 355 North 2nd Street, did you know then what you were there for?

A. Tree-top told me to just only watch to see no-

body came in while Tree-top and Fats went in with him to rob somebody.

Q. Were you at any time inside the broom factory at 355 North 2nd Street?

A. No.

Q. Did you at any time see Tree-top or Fats strike anybody in the premises?

A. No, because I was outside. I couldn't see what was going on inside.

Q. After Tree-top and Fats and yourself left the premises at 355 North 2nd Street, what was the conversation, if any, between you three men?

A. We agreed that I don't know you and you don't know me if we got arrested. When they came out of the place one of them, I don't know whether it was Fats or Tree-top, said, 'One of them wasn't no trouble at all but one of the sons of bitches I had to give a hell of a blow to.'

Q. Is there anything else you want to add to this statement?

A. No.

Q. Can you read and write?

A. No.

The foregoing statement was read to me by Det. O'Mahony and it is true: I can sign my own name but that is all. —(Signed) Clarence Lofton."[3]

BY MR. McCLAIN:

Q. When that statement was read to Clarence Lofton was Aaron Turner present?

A. Yes, sir.

Q. Jaspar Johnson was present?

A. Yes, sir.

Q. After the signature by Clarence Lofton then Aaron Turner signed it?

A. Yes.

Q. In your conduct of this investigation were you under the orders of Lieutenant Kelly, your chief?

A. Yes.

Q. What you did in this matter was done by direction of Lieutenant Kelly?

A. Yes, sir.

CROSS-EXAMINATION.

BY MR. ROME:

Q. Detective O'Mahony, will you please state at what time the statement was made by Aaron Turner and was taken as it appears in the transcript?

A. The statement of Aaron Turner ——

THE COURT: Wasn't that covered a while ago?

MR. ROME: I want it noted as to the time that appears in these statements.

THE WITNESS: You asked me of the statement of Aaron Turner? That was 9:45.

BY MR. ROME.

Q. Does the length of the time appear there?

A. The length of time appears in the statement of Aaron Turner and that covers the three statements, the statement of these three men.

Q. No. What I mean is does it appear on this statement how long a period of time was taken up in the getting of this statement?

A. Yes, sir.

Q. Will you tell us that, please?

A. In the central cell room from 9:45 until twelve noon, June 8, 1946.

Q. That is true for all the statements, isn't that correct?

A. Yes, sir.

Q. You have previously testified that this man appeared before a magistrate at 10:15 or 10:30?

A. I was possibly wrong about that because after the statements were taken I left and Detective Fisher and Detective Lennon carried on from there.

Q. You were present at the magistrate's hearing?

A. Yes, sir.

Q. Your recollection is that it started at 10:15?

A. I said that ——

Q. I ask you if that is your recollection?

A. Yes, sir.

Q. You may be wrong about it?

A. Yes, sir.

Q. These statements were taken from 9:45 until noon of that day?

A. That is right, sir.

BY MR. McCLAIN:

Q. Is it possible that the interruption of the statement was caused by the magistrate's hearing?

A. I am not sure about that.

BY THE COURT: How long did it take to take the statements?

A. The three statements took from 9:45 until twelve o'clock noon.

BY MR. McCLAIN:

Q. Were you at the magistrate's hearing?

A. Yes, sir.

BY THE COURT:

Q. Was the police stenographer—did he take the statements down in shorthand and reduce them to typewriting or did he type them off a machine as the questions were being asked and answered?

A. He took them down in shorthand and reduced them to typewriting.

BY MR. McCLAIN:

Q. You say you were present at the magistrate's hearing?

A. Yes, sir.

Q. Did you hear Jasper Johnson testify at the magistrate's hearing?

A. Yes, sir, I did.

Q. Will you give us your recollection of what he said at the magistrate's hearing, telling us whether or not Aaron Turner was present?

A. He was present.

Q. Was Clarence Lofton present?

A. Yes, sir.

Q. Tell us what you heard Jasper Johnson say at the magistrate's hearing—was he sworn?

A. Yes, sir.

Q. What is your recollection of what Jasper Johnson said in the magistrate's hearing in the presence of Aaron Turner and Clarence Lofton?

A. He said that me, meaning himself, Jasper Johnson and Aaron Turner and Clarence Lofton went to the broom factory some time in the middle of December and he, meaning himself, Jasper Johnson, and Aaron Turner, went into the broom factory while Clarence Lofton stayed outside as a lookout and that Aaron Turner hit the two men and he took a wallet from the pocket of one of the men and took some money out of it and threw the wallet down the elevator shaft. He said he kept $3 of that money and gave the rest to Aaron Turner and they then left.

Q. Was Clarence Lofton sworn before Magistrate O'Malley on June 8, 1946, at that hearing?

A. Yes, sir, he was.

Q. Did Lofton testify after Jasper Johnson?

A. Yes.

Q. In the presence of Aaron Turner?

A. Yes, sir.

Q. Did you hear this question asked of Clarence Lofton?

MR. ROME: I object to that, your Honor.

THE COURT: Bring out what time it was.

BY MR. McCLAIN:

Q. About what time was the magistrate's hearing on June 8, 1946 before the magistrate? It says here Magistrate Williams.

A. Magistrate Williams was the magistrate, yes, sir.

Q. About what time was that, to the best of your recollection?

A. It was between ten and ten-thirty on the morning of June 8—I am referring now to my notes.

Q. At or before or while the statements were taken; is that correct?

A. Yes.

Q. Were or were not the statements interrupted for the purpose of the magistrate's hearing?

A. Yes.

Q. Did you hear this question asked by Clarence Lofton in the presence of Aaron Turner among other questions? "Were you there when these events happened?" Did you hear that?

A. Yes, sir.

Q. Did you hear Clarence Lofton make this answer: "Yes, sir. He just about covered everything. I was there, and was standing outside watching." Did you hear him say that in Turner's presence?

A. Yes, sir.

Q. Did you hear this question asked: "Q. You corroborate what he has said?" Lofton then said in the presence of Turner "That is right."

A. Yes, sir.

Q. Was Aaron Turner sworn after Clarence Lofton?

A. Yes, sir, I believe he was.

Q. Did you hear Aaron Turner asked this question in front of Magistrate Williams: "Can you add anything?

A. No, sir."

MR. ROME: I object to that. It appears from the transcript of the testimony ——

THE COURT: I don't have a copy of the testimony before me.

BY MR. McCLAIN:

Q. Did you hear this question asked: "Q. Do you want to say anything to his Honor?"

MR. ROME: That is not what appears there.

BY MR. McCLAIN:

Q. "Do you want to say anything to his Honor?
A. No, sir.
Q. Can you add anything?
A. No, sir."

MR. ROME: It appears from that question and answer inasmuch as the defendant had already been warned by the district attorney that he was attempting to get some information. I think it is improper to introduce. He said, "Do you want to say anything to his Honor," and the answer was "No, sir." He was attempting in his way to claim privilege.

THE COURT: That is your interpretation of it. I will admit it subject to your objection and grant you an exception.

BY MR. McCLAIN:

Q. Now, Turner was asked the following question: "Can you add anything?
A. No, sir.
Q. You don't want to add anything. Do you agree with the testimony that these two men have given in court?
A. Yes, sir.
Q. You corroborate their testimony?
A. Yes, sir.
Q. You say that is true?

A. Yes, sir.

Q. You are not denying anything that they said?

A. No, sir.

Q. How much money did you get in this?

A. I don't know.

Q. About how much?

A. I would say $175.

Q. Did you divide up with the others? Was that $175 that which you yourself got out of the thing?

A. Yes.

Q. Was that in addition to the $50 that one got and the $175 the other got?

A. No, sir.

Q. That's your share?

A. Yes, sir.

Q. You got $175 yourself?

A. Yes, sir."

Now, Clarence Lofton was recalled and did you hear Clarence Lofton—did you hear these questions asked by the assistant district attorney:

"Q. Will you tell his Honor how much you got out of this?

A. About $87 is what he gave me.

Q. That was given to you by Tree-top Turner?

A. That's right."

Then Jasper Johnson was recalled and did you hear these questions asked by the assistant district attorney?

"Q. How much did you get?

A. $50.

Q. How much was in the wallet?

A. I estimated about $175. I wasn't sure.

Q. Whom did you get that from?

A. The first white fellow in the building he slugged. I passed it to Treetop."

Did you hear those questions and answers?

A. Yes, sir.

MR. ROME: Having objected primarily I ask that all this evidence be stricken out.

THE COURT: I will overrule your objection and grant you an exception.

BY MR. McCLAIN:

Q. That ends your connection with the matter?

A. Yes, sir.][5]

DETECTIVE NATHANIEL R. THOMPSON (No. 191), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Detective Thompson, were you assigned to this alleged robbery at the Ace Broom Company of Frank Endres and Mr. Simmons?

A. Yes, sir.

Q. When did you enter into the case?

A. On this particular case on the day of Treetop's —Aaron Turner's arrest.

Q. Did you in conjunction with Detective O'Mahoney, conduct an investigation and were you present at the taking of these statements?

A. Yes, sir.

Q. Is that your signature on the back of each of these statements as witnesses?

A. Yes, sir.

Q. Did you see Aaron Turner sign his statement and also sign the statement of Jasper Johnson and Clarence Lofton?

A. Yes, sir, I did.

Q. Did you see Clarence Lofton sign his statement and Johnson sign his statement and also both men sign each other's statements and the one Turner made?

A. Yes, sir, I did.

Q. Were you present in the magistrate's court before Magistrate Williams on June 8, 1946; when there was a hearing, at which time Jasper Johnson detailed what had happened and Clarence Lofton was sworn and testified as I read to Detective O'Mahoney and also Aaron Turner, this defendant?

A. Yes, sir.

Q. Do you corroborate O'Mahoney's testimony as to the questions directed to the defendants in open court before the magistrate?

A. Yes, sir.

CROSS-EXAMINATION.

BY MR. ROME:

Q. Detective Thompson, at what time was the magistrate's hearing?

A. I would say—I would corroborate O'Mahoney's statement. It was between ten and ten-thirty, approximately.

Q. At what time were these statements taken?

A. The stenographer came in and took the statement and while he was reducing the statement to writing the hearings were—the magistrate was outside for the hearings and we took them out. In the meanwhile I brought them down to writing and they were read to the defendants, the statement given to each defendant and he followed it along and then they were signed by the defendants.

Q. Your statement is that these statements had been already given to the stenographer at the time the magistrate's hearings were started; is that correct?

A. Yes, sir. If they were not completed when the hearings were over—if any was left—I don't remember the details—he was brought back and the statement was resumed from there.

Q. In other words, you are not sure of just the exact time that any statement was completed as compared with the magistrate's hearing?

A. I should imagine that if it was started at 9:45 it can be completed at 10:30.

Q. You said they were not completed and transcribed by the stenographer?

A. One may have been but I don't think the three of them at that time.

Q. Was Aaron Turner's statement completed at that time?

A. I don't recall that.

Q. Do you recall whether or not the statement was written, that signed written confession which had been obtained from these three men?

A. I don't recall that either.

Q. That statement does appear on page 2?

A. Yes, sir, the statements were taken.

Q. They were taken?

A. Yes, sir, if it was testified to.

THE COURT: What statement is that?

BY MR. ROME:

Q. Now, these statements were made by the police in answer to a question by the assistant district attorney: "Does each one admit in his signed statement that he was involved in the homicide?

A. They do, sir."

Therefore it appears ——

THE COURT: It appears that they were taken by the stenographer in shorthand and the statements were then interrupted by going to the magistrate's

court and probably they came back and signed them. That is one inference, isn't it?

A. Yes, sir.

THE COURT: The reason I say that is that the magistrate's hearing before the magistrate took place between ten or half-past ten and the statements as made which had been reduced to typewriting started at 9:45 in the morning and finished around 12:30, which is subsequent and that might indicate that the statements were transcribed and put into typewriting subsequent to the magistrate's hearing. That is an inference, of course.

MR. ROME: Yes, but I submi to your Honor ——

THE COURT: You can do whatever you please. If you want to say that it is wrong, all right.

BY MR. ROME:

Q. Now, Detective Thompson, did you participate in the actual arrest of Aaron Turner?

A. Yes, sir.

Q. What time of the day was that?

A. It was in the morning.

Q. Of what day?

A. June 3rd.

Q. What did you do with him after you took him into custody?

A. I brought him into City Hall to the Homicide division for questioning.

Q. Did you question him at that time?

A. Yes, sir.

Q. How long did your questioning cover?

A. Well, there were several other men involved in various other ——

Q. I am just asking you how long your questioning covered.

A. Throughout the entire time and four or five days following.

Q. About how many hours would you say you yourself questioned Aaron Turner and each of these defendants?

A. I can't say that because there are several other men ——

THE COURT: Keep your mind on this defendant. How much time was spent on this man?

THE WITNESS: A couple of hours.

BY MR. ROME:

Q. A couple of hours?

A. Yes.

Q. Did you ever question him at night?

A. Yes, sir.

Q. About what time at night did you question him?

A. From about seven o'clock until nine-thirty, possibly.

Q. Never later than nine-thirty?

A. Yes, sir.

Q. Did you question him at any place than here in City Hall?

A. Yes.

Q. Where?

A. The First Detective Division, 15th and Snyder Avenue.

Q. Do you know the date that occurred?

A. No, sir.

Q. Do you know how long you questioned them?

A. At that night from seven until nine-thirty.

Q. How long was he kept at 15th and Snyder Avenue?

A. I can't say—maybe—well, a day, as near as I can remember, about a day.

Q. Why was he taken to 15th and Snyder Avenue?

A. From orders of the commanding officer of the homicide division.

Q. Who was that?

A. Lieutenant Kelly.

Q. You don't know?

A. I take my orders from Lieutenant Kelly.

Q. Who else questioned him down at 15th and Snyder Avenue while you were there?

A. Detective O'Mahoney and Detective Fisher.

Q. Did all three of you question him together at the same time?

A. Yes, sir.

Q. Did you also question them separately?

A. Yes, sir.

Q. In what room at 15th and Snyder Avenue did the questioning take place?

A. The detective's roll room.

Q. Will you describe that room?

A. The room is in the back of the second floor where the First Detective Division is located and it is—it has a stand-up screen where they put suspects in for the purpose of identification, and outside that room is possibly a couple of chairs. The chairs are arranged so that the audience can sit—well, possibly ten chairs.

Q. Was Turner ever in your presence informed that he had the right to have a lawyer?

A. Not by me.

Q. Was he informed by anyone else in your presence?

A. No, sir.

Q. Did he make any request to get in touch with friends or relatives?

A. No, sir.

Q. Did you bring Turner back from 15th and Snyder Avenue to City Hall?

A. No, sir.

Q. Do you know when he was brought back?

A. No, sir. He was kept there for about one day.

Q. Did you question him after he was returned from 15th and Snyder Avenue?

A. Yes, sir.

Q. Where?

A. City Hall cell room.

Q. Was that before the magistrate hearing?

A. Yes, sir.

Q. Did you ever question him after the magistrate's hearing?

A. Yes, sir.

Q. When?

A. The day of the hearing I talked to him right after the hearing.

Q. You talked to him when?

A. Right after the hearing.

Q. Did you talk to him before the hearing?

A. I was present when the statement was taken.

Q. You did talk to him?

A. Yes, sir.

Q. Did you question him at any other time after the magistrate's hearing?

A. That day I did not see him any more.

Q. Do you know when he was taken to the county jail?

A. No, sir.

Q. Detective, at any time while you were present did you strike Aaron Turner?

A. No, sir.

Q. Did you ever see him struck?

A. No, sir.

Q. Neither at City Hall or 15th and Snyder Avenue?

A. No, sir, neither place.

DETECTIVE JOHN A. CAREY (No. 4024), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Detective Carey, as a member of the Philadelphia police force and a member of the Homicide Squad, were you present at the time statements were taken from this defendant, Aaron Turner and Jasper Johnson and Clarence Lofton?

A. Yes, sir.

Q. Did you see those statements signed by Aaron Turner, Jasper Johnson and Clarence Lofton?

A. Yes, sir.

Q. Did you see each page of each man's statement signed by the other two men?

A. Yes, sir.

Q. Were there any threats made or promises made to this defendant or to Jasper Johnson or Clarence Lofton before those statements were signed?

A. Not in my presence, sir.

Q. Were they voluntary statements made by those men?

A. Yes, sir.

Q. That ended your connection with the matter?

A. As to questioning, I assisted in the questioning.

Q. You questioned this defendant?

A. Yes, sir, and the other, too.

Q. Were you present at the magistrate's hearing?

A. Yes, sir.

Q. You say that Jasper Johnson was sworn and he heard testimony before Magistrate Williams?

A. Yes, sir.

Q. Did you also hear Clarence Lofton testify before the magistrate?

A. Yes, sir.

Q. Did you also hear this defendant, Aaron Turner?

A. Yes, sir.

Q. Did you hear the testimony which I read to Detective O'Mahoney, from the stenographic notes of the hearing?

A. Yes, sir.

Q. Is that your recollection of what took place?

A. Yes, sir.

BY THE COURT:

Q. Were you there at the time statements were made at 9:45 in the morning? What time did you get there?

A. Shortly after nine o'clock.

Q. You say each of these men made certain statements and you heard the answers?

A. Yes, sir.

Q. Prior to the time that you asked the questions and prior to the time that they gave you the answers and prior to the time that they signed their names to each one of these statements did you see anyone in your presence strike or beat this man or any of them?

A. No, sir.

Q. Did you ever see any evidence that they had been beaten by anyone else?

A. No, sir.

CROSS-EXAMINATION.

BY MR. ROME:

Q. Now, Detective Carey, do you recall when last you questioned Turner before the magistrate's hearing? When last before June 8th?

A. June 7th, sir, in the evening.

Q. At what time?

A. I think I got there about eight o'clock until about eleven o'clock, if I recall correctly.

Q. You questioned the defendant during all that period of time?

A. Yes, sir.

Q. Did you question him by himself?

A. No, sir, in the presence of the other detectives.

Q. What detectives?

A. Detective O'Mahoney.

Q. Who else?

A. Detective Lennon, they were in and out. Sergeant Riccardi was there sometimes and Lieutenant Kelly was there. Sometimes they were in and out.

Q. In other words, all of the officers who participated in this case were in and out during the time —during the night of Friday the 7th?

A. Yes, sir.

Q. Was anything said at that time to Turner informing him that he was coming up before a magistrate?

A. I don't recall that, sir. We tried to get the truth concerning it. I don't remember anything about it.

Q. Did you ever tell him that he had the right to have a lawyer?

A. No, sir.

Q. Did anyone ever in your presence tell him that he had the right to have a lawyer?

A. I don't remember.

Q. Did he ever make any request of you or in your presence to get in touch with friends or relatives?

A. No, sir.

Q. Did you participate in taking him to 15th and Snyder Avenue?

A. No, sir.

Q. Did you question him at any time other than Friday night, the 7th of June and Saturday night, the 8th of June?

A. The third of June, the 6th of June, the 7th of June and the 8th of June.

Q. Those four times?

A. Yes, sir. I remember those times.

Q. How many hours did you question him on the 3rd?

A. I think it was about three o'clock in the evening.

Q. From what time?

A. It was after dinner, possibly seven-thirty until ten o'clock. That is about the time.

Q. How about on the 6th?

A. On the 6th I questioned him in the afternoon and evening.

Q. About how many hours?

A. In the afternoon it was off and on about two hours.

Q. How about in the evening?

A. I was there about three hours but of course I did not question him during all that time. The other detectives did.

Q. That is also true as to the third? The other detectives questioned him that day?

A. Yes, sir.

Q. Did you ever on the night of Friday, June 7th, say to Turner that if you will talk you will get ten to twenty years and get out but if you don't talk we will beat you again?

A. No, sir.

Q. Were you ever present when Turner was struck

by a rubber hose that missed him and hit you on the hand?

A. No, sir.

Q. Were you ever treated by a police surgeon?

A. Not possibly for nine or ten years.

Q. You had trouble at that time?

A. That is about nine or ten years ago.

Q. Have you ever seen a doctor since June 3rd for anything wrong with your hand?

A. No, sir.

Q. Have you ever had anything wrong with your hand?

A. No, sir.

Q. Do you know when Turner was taken to the County Jail?

A. No, sir. He was taken back to the cell room. After the statements I did not see him.

Q. Did you see them when they were reduced to writing?

A. Yes, sir.

Q. Do you know why Turner was not taken before a magistrate immediately after he was picked up on the 3rd?

A. We questioned him from that time until he made a statement.

Q. That is the reason?

A. Yes, sir.

Q. Do you recall what time of the day it was on June 8th that Turner signed the statement?

A. I can't recall.

Q. Can you recall whether it was before or after the magistrate's hearing?

A. If I recollect correctly it was afterwards because the statement of another man was taken before.

Q. Before the testimony at the magistrate's hearing?

A. Yes, sir.

BY MR. McCLAIN:

Q. Whatever you did you did under the directions of Lieutenant Kelly?

A. Yes, sir.

LIEUTENANT KELLY (No. 4), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Lieutenant Kelly, you are in charge of the homicide squad of Philadelphia, Pa.?

A. Yes, sir.

Q. You directed an investigation of this broom company robbery and the two murders; is that correct?

A. Yes.

Q. You were present of course when these statements were taken from these three defendants?

A. Yes.

Q. You saw them signed and you witnessed them?

A. Yes, sir.

Q. Were you also present before Magistrate Williams on June 8th, 1946, when a hearing was held at which time Aaron Turner, this defendant, was a prisoner and Clarence Lofton and Jasper Johnson were prisoners?

A. Yes, sir.

Q. Did you hear Assistant District Attorney Burke make this statement in open court about this defendant Aaron Turner and about Jasper Johnson and Clarence Lofton: "Do any of you men want to say anything this morning? I warn you in advance that anything you say may be used against you in court and that you don't have to say anything if you don't want to. I understand, however, that you have made statements to the officers and signed those statements. Jasper Johnson, you have made a signed statement to the officers? Jasper Johnson: Yes, sir. Mr. Burke: Do you want to say anything this morning? Jasper Johnson: Yes, sir."

Did you hear that colloquy?

A. I heard something that would probably amount to the same words. I can't swear to it word for word.

Q. Does that agree with your recollection?

A. Yes, sir, with the exception of that part there where you say "You men have signed." I think that can be explained a little further. It appears to be

confusing. These statements — this defendant showed a desire to make a statement on that night of the 7th and that desire was conveyed to me and at that particular moment, due to the amount of work involved with this defendant and all the other defendants I was unable to obtain stenographic service. I spoke to the men and told them I would take the statement Saturday morning, and Saturday morning as soon as I was able to obtain a stenographer statements were started.

I had talked to Magistrate Williams and asked him if he would accept the defendants for a hearing and he said certainly he would. I told him we would be in the cell room and whenever he was ready I would see that they would be put up before him. Some time during the process of the taking of the statements—whether or not it was on the reduction of the shorthand notes to the typewritten statement or whether or not they were signed as they were finished, I don't recall—but there was an interruption and they were taken out before the magistrate accompanied by the detectives and myself. I informed the men that they were going to get a hearing and would they be willing to testify before the magistrate and they said they would. The exact wording that the district attorney might have carried weight that following morning when he made it in the statement of that type.

Q. Is your testimony that the taking of the statement may have been interrupted for the magistrate's

hearing or that one or more or all of them may have been signed just before?

A. One or two might have been signed but I know it was still in the process of questioning or the reduction from shorthand notes to typewriting. There was an interruption for the purpose of giving the men a hearing.

Q. And for the stenographer to transcribe his notes?

A. Yes, sir. I can't recall whether he reduced each statement as he finished it or whether he took his shorthand notes from all and had them sign all together.

Q. In any event, the hearing was held where?

A. At the Central Magistrate's Court, 625 City Hall.

Q. That is one floor above the Sheriff's cell room?

A. The same floor. The same floor as our cell room.

Q. Do you remember Jasper Johnson being sworn in the presence of this defendant?

A. I do.

"[Q. Do you remember him being asked these questions by the assistant district attorney, Mr. Burke?

"Q. Now, what is your name?

A. Jasper Johnson.

Q. Are you also known as James Johnson, Fats, and Playboy?

A. Yes, sir.

Q. What is your residence?

A. 620 South 13th Street.

Q. You have heard the testimony of Lieutenant Kelly before his Honor this morning?

A. Yes, sir.

Q. Do you want to add anything to that?

A. Yes, sir.

Q. Were you connected with the activities that Lieutenant Kelly testified to?

A. Yes, sir.

Q. Were you involved in the homicide of Charles Simmons and Frank Endres?

A. Yes, sir.

Q. What part did you play in that?

A. December 15, at 12th and Bainbridge Aaron Turner and Clarence Lofton came to 12th and Bainbridge Street and got me. Treetop said to me ——

Q. Who is Treetop?

A. Aaron Turner said to me, "Come on Fats and go with me. I'm going to get some money." I said to Treetop, I said, "I don't mind going but I don't want no trouble." He said, "There were no trouble. Come on." We goes to 12th and South and from 12th and Bainbridge and stopped between 5th and 6th at a hot dog stand and gets a couple of sandwiches apiece. We leave there. We goes to 2nd Street. We goes to start and I had been drinking and we were beginning to get sick. So Clarence said, "Treetop, if it gets much further we'll catch a trolley." Treetop said, "We don't have much more to go so we'll walk on down." So, we walked to 2nd and Callowhill. Treetop says to Clarence, "You wait on the highway." Treetop and I goes in the first

door together. We goes in the first door together and gets on the inside. Treetop had a package in his pocket, a pipe wrapped up in newspaper.

Q. A package? What kind of a package?

A. A piece of sashweight wrapped up in paper, about eight inches long and about that round (indicating one inch). We get to the first floor. Treetop drops ahead.

Q. Did you follow him in?

A. I followed him in. He gets one of the guys. The smallest guy he slugs. I don't know how many times he slugged him.

Q. Did you see that?

A. Yes, sir. After Treetop slugs him I gets in his pocket and gets his wallet. I was trying to get it out of his hip pocket. I slings the wallet in the building where I don't know. So when I looks around, Treetop and this other guy is tussling.

Q. You saw him tussling with another man?

A. Another white man. So after I gets through mine I looks around and said, "Let's go." So I leave out running. Treetop follows.

Q. You mean you left the place?

A. I left running. Treetop follows. After Clarence sees us running Clarence follows us.

Q. What was Lofton doing?

A. He was the watch out man. He never entered the building. So, we goes on down the street. We get near 8th and Callowhill, somewhere close by. I look at the money, I don't know exactly how much, it looks like $175.

Q. You testified before that you threw the wallet away?

A. I takes the money out before I threw it away. So, I takes $50. I hand the other to Treetop. Treetop gave Clarence some money. I don't know how much. So, after Treetop gives Clarence the money ——

Q. Did you see him give Clarence the money?

A. I saw him but I don't know how much. I said to Treetop, "How much—what did you get off the other fellow?" He said, "Nothing." We go to 8th and Callowhill and gets a couple of large drinks. Treetop goes in the bathroom and comes out. We catch an 8th Street trolley and go back down town to 12th and South. We get a couple of drinks in there and goes from 12th and South to 12th and Bainbridge where I met him and get a couple of more drinks and splits up there.

Q. Up until then you had been together?

A. That's right. The next what was said, Treetop said to me and Clarence, "Anybody gets arrested you don't know me and I don't know you."

Q. Who said that?

A. Aaron Turner—Treetop.

Q. Then what happened?

A. That's all; we split up.

Q. How about this second man in the room?

A. Treetop had him.

Q. What was he doing to him?

A. When I looked around, him and Treetop was tussling.

Q. Did you see Treetop slug him?

A. I saw some blood.

Q. Did Treetop still have this object in his hand?

A. I'm not sure whether he had that sashweight at the time or not.

Q. Did you see Treetop slug him or the second man?

A. That's right.

Q. Was the first man on the floor at the time?

A. Yes, sir, he was on the floor and I was trying to get him to stop it.

Q. Was he lying on the floor when you three left?

A. Yes, sir.

Q. Anything else you can add?

A. No, sir."

Did you hear those questions asked of Mr. Johnson?

A. Yes, sir.

MR. ROME: I would like to renew my previous motion that this testimony all be stricken out.

THE COURT: I will overrule your objection and grant you an exception.][6]

BY MR. McCLAIN:

Q. Was Mr. Clarence Lofton sworn after that?

A. Yes, sir.

Q. Did you hear the district attorney ask Mr. Lofton these questions:

MR. ROME: I renew my objection as to this testimony also, your Honor.

THE COURT: I will overrule your objection and grant you an exception.

BY MR. McCLAIN:

Q. Did you hear these questions asked of Mr. Lofton:

"Q. You have been told that anything you say may be used against you, and that you don't have to speak unless you want to. However, I am going to give you the opportunity of speaking if you want to. You have just heard the story of Jasper Johnson. Anything you can add to that?

A. No, sir, I haven't anything to add to it.

Q. Were you there when these events happened?

A. Yes, sir. He just about covers everything. I was there and was standing outside watching.

Q. You corroborate what he said?

A. That's right."

Did you hear those questions asked in the presence of this defendant?

A. I did, sir.

[Q. Then did you see Aaron Turner, this defendant, sworn?

A. Yes, sir.

MR. ROME: I renew my objection as to the reading of this testimony.

THE COURT: Objection overruled. Exception granted.

BY MR. McCLAIN:

Q. Did you hear Mr. Burke, the assistant district attorney address this defendant as follows:

"Q. Do you want to say anything to his Honor?

A. No, sir.

Q. Can you add anything?

A. No, sir.

Q. You don't want to add anything? Do you agree with the testimony that these two men have given in court?

A. Yes, sir.

Q. Do you corroborate their testimony?

A. Yes, sir.

Q. You say that it's true?

A. Yes.

Q. You are not denying anything that they said?

A. No, sir.

Q. How much money did you get?

A. I don't know.

Q. About how much?

A. I would say about $175.

Q. Did you divide up with the others? Was that $175 that which you yourself got out of the thing?

A. Yes, sir.

Q. Was that in addition to the $50 that one got and the $175 the other got?

A. No, sir.

Q. That is your share?

A. Yes, sir.

Q. You got $175 yourself?

A. Yes, sir."

Is that what was asked and are they the answers which were given?

A. Yes, they are the answers he made at that hearing.

MR. ROME: I renew my previous motion.

THE COURT: I will overrule your objection and grant you an exception.[8]

[BY MR. McCLAIN:

Q. Did you hear the questions and answers that were addressed to Clarence Lofton when he was interrogated as follows by Mr. Burke?

MR. ROME: I object to that, your Honor.

THE COURT: I will overrule your objection and grant you an exception.

BY MR. McCLAIN:

Q. Did you hear the following questions:

"Q. Will you tell his Honor how much you got out of this?

A. About $87 is what he gave me.

Q. That was given to you by Treetop Turner?

A. That's right."

Is that right?

A. Yes, sir.

Q. Now, Johnson was recalled as follows:

"Q. How much did you get?

A. $50.

Q. How much was in the wallet?

A. I estimated about $175. I wasn't sure.

Q. Whom did you get that from?

A. The first white fellow in the building he slugged. I passed it to Treetop."

Did you hear those questions asked in open court?

A. Yes, sir.

CROSS-EXAMINATION.

BY MR. ROME:

Q. Lieutenant Kelly, you were present at the magistrate's hearing?

A. Yes.

Q. Did this defendant have a hearing at that time?

A. He did not.

Q. Was he informed that he had the right to have a lawyer?

A. I inquired several times of Aaron Turner if there was anyone that he desired to see while he was in custody and he said no.

Q. Was he informed that he had the right to a lawyer?

A. I was not his legal adviser. I am a police of-

ficer. I have no right to inform him about those things.

BY THE COURT:

Q. Did you ask him if he wanted a lawyer?

A. No, sir. I asked him if he wanted anyone at all and his answer was as I said.

BY MR. ROME:

Q. You did not tell this defendant that he had the right to have a lawyer?

A. No, sir.

Q. Did anyone to your knowledge tell him that he had a right to have a lawyer?

A. Not in my presence.

Q. It has been testified here that this investigation was started on your direction and Detectives O'Mahoney and Thompson testified that they picked up Aaron Turner on your direction?

A. Yes, sir.

Q. Will you tell us what it was that led you ——

MR. McCLAIN: Objected to.

THE COURT: What does it matter how they got the information?

MR. ROME: I have the right to ask him what it was that led up to it.

THE COURT: That is part of his police work.

THE WITNESS: From information received ——

MR. ROME: I make an objection.

THE COURT: What is your objection? I don't understand it. I don't want to encumber the record with a lot of objections.

MR. ROME: All I want to know is whether or not there was ——

THE COURT: You ask the question you want to ask and I will rule on it.

BY MR. ROME:

Q. Why did you order this defendant, Aaron Turner, to be picked up?

MR. McCLAIN: Objected to.

THE COURT: He can answer the question.

THE WITNESS: As a result of information received a subsequent investigation was had which showed that this man was involved in the homicide of Mr. Endres.

BY MR. ROME:

Q. When you had him picked up why didn't you have him brought before a magistrate immediately?

A. That is a hard question to answer directly. He was picked up with others, some that we wanted and some that we did not want and we had to separate the wheat from the chaff, and when I confronted him with the other defendants they had a lot of trouble trying to straighten out the details among themselves which took up a lot of time.

Q. Other suspects were arrested at the same time?

A. He was arrested by himself.

Q. You had also in your custody other men suspected of this crime?

A. Not of this same murder.

Q. You have told the Court and jury that you had him arrested because you had information and as a result of an investigation it pointed to this man. Didn't you have enough to bring him before a magistrate?

A. Well, that is a matter of conjecture. I didn't think it was the proper time to take him before a magistrate. I felt that it would hurt the Commonwealth's case. I was not prepared. There are many things to be run out. At first opportunity I gave them a hearing.

Q. After having held them for five days when on the night of Friday, June 7th they finally indicated that they would make a statement, you were not

able to have their statements taken down at that time?

A. Yes, sir. They offered to make statements before that time. In fact, I debated in my mind whether or not I would take statements at all. They had so much trouble ironing out details among themselves.

Q. The stories did not gee at that time?

A. They agreed on everything except the question of money involved taken by Aaron Turner and when these men were brought in the whole trouble started over the fact that the other man did not know that Aaron Turner had robbed this man of ——

MR. ROME: Just a minute.

THE COURT: Why do you ask questions like that?

BY MR. McCLAIN:

Q. Go ahead.

A. It was the first that the other two defendants learned that Aaron Turner had went in there and that he had stuck money in his own pocket and kept it to himself, the major portion of the money taken from one of the victims. The only money divided is the money they found in the wallet and they started to fight among themselves as to how much he got that they did not know about, and these men were still arguing about that.

Q. These men were willing to give you a statement before the night of June 7th?

A. Yes, sir.

Q. You also said that it was also possible that the district attorney Burke's statement before the magistrate might not have been a full warning of their rights?

A. No, sir.

Q. Do you remember whether or not Turner's statement had already been signed at the time of the magistrate's hearing?

A. That I can't recall.

Q. Was it on your direction that Aaron Turner was taken to 15th and Snyder Avenue?

A. Yes, sir, it was.

Q. Do you know how long he was kept there?

A. Until I was ready to bring him back. It might have been a day or a day and a half.

Q. When did you yourself question him for the first time?

A. June 3rd.

Q. How long did you question him on June 3rd?

A. I was reluctant to definitely state. I might give approximate times. It might be five or six minutes or a half hour or so.

Q. How long during the entire day, Lieutenant

A. I would—well, it would be unfair for me to say definitely whether it was a half hour or one hour.

Q. Approximately how long did you question him on June 4?

A. I can't recall that.

Q. Was he questioned by any other officers on June 4th?

A. Yes, sir.

Q. For approximately how long?

A. Well, I can only answer you by giving my own personal knowledge of being in the presence of the man at that time. I can only say that he was questioned for five minutes while I was in their presence.

Q. Approximately how long would you say from the time you were first picked up until the magistrate's hearing was he questioned by you personally?

A. That is hard to say. I mean, it is a very ——

Q. I mean an approximation.

A. I can't answer that definitely. First of all, you have to know the procedure of questioning. I can't attempt to compute the time. To my recollection, your Honor, during the process of the whole investigation I might say that I talked to these men—to be honest with you, I can't actually say I talked to these men for one hour.

Q. All I ask is an approximation.

A. That is not an accurate answer.

BY THE COURT:

Q. Did you devote yourself to this case during this entire time?

A. No, sir, not one of the detectives devoted himself to the entire case in that time.

Q. Do you know what time Turner was taken to the County Jail?

A. It was—I don't know. I don't keep those records but it would be after June 10.

SERGEANT SAMUEL RICCARDI (No. 42), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Sergeant Riccardi, you are also connected with the homicide squad of Philadelphia, Pa.?

A. Yes, sir.

Q. You were present when these statements were taken from these defendants?

A. Yes, sir.

Q. You witnessed all these statements?

A. Yes, sir.

Q. Were you present at the magistrate's hearing?

A. Yes, sir.

Q. Did you hear testimony about this case which has been related in questions put by Lieutenant Kelly?

A. Yes, sir.

Q. And Detective Thompson and O'Mahoney?

A. Yes, sir.

[10][Q. Following the magistrate's hearing and the signing of these statements on June 10, 1946, did you in company with other detectives and these defendants, Aaron Turner and Jasper Johnson and Clarence Lofton, go to the scene of this alleged robbery and homicide at 355 North 2nd Street?

A. Yes, sir.

Q. Sergeant Riccardi, there was a memorandum taken of everything that occurred on these premises; is that correct?

A. Yes, sir.

Q. You have refreshed your recollection from that memorandum?

A. Yes, sir.

Q. Now, tell his Honor and the jury everything that occurred on June 10 at the scene of this crime in which this defendant was present.

A. On June 10, at approximately 4:25 p. m., we took the defendant, Aaron Turner and Jasper Johnson and Clarence Lofton to the Ace Broom Factory at 255 North 2nd Street. We entered the premises and on the premises at that time there was also a Mrs. Simmons who is the wife of the deceased.

Q. It was at 4:25 p. m.?

A. Yes, sir, and I asked Jasper Johnson was he familiar with this place and did he recognize this place and he said, "I do." He said that on December 15 he and Aaron Turner and Clarence Lofton went down there and he entered the place with Aaron Turner and upon entering the place one white man

came near the elevator and Aaron Turner slugged him over the head with this bar which apparently seemed like a sash weight. He reached down and took a wallet and in the meantime another white man came in and he said that Aaron Turner slugged him over the head and they both went out while Clarence Lofton was on the outside as a lookout at the front door.

Q. In other words, what did you do there, re-enact what happened?

A. Yes, sir, we re-enacted the part that each one took and after that ——

Q. After your re-enactment of that offense did this defendant do anything or say anything?

A. I asked Aaron Turner in the presence of the other two defendants and the people in the broom factory and he said he did not wish to say anything.

Q. Did he deny what had been re-enacted?

A. No, sir.

Q. You say there was a Mrs. Simmons there?

A. Mrs. Simmons was in the place and one other gentleman in the office who works there.

Q. Who were the actors in this re-enactment?

A. Clarence Lofton and Jasper Johnson and Aaron Turner.

Q. Who took part in the re-enactment?

A. They did.

Q. You had three men, Jasper Johnson, this defendant Turner and Clarence Lofton?

A. Yes, sir.

Q. You took them to this factory?

A. Yes.

Q. You went inside the door and said to them, "I want to see a re-enactment of what happened"? Is that correct?

A. I asked the defendant, "Do you recognize this place?"

Q. You got into the place?

A. Yes, sir.

Q. Then you had to go through the re-enactment?

A. Yes, sir.

Q. What did Turner do?

A. He had nothing in his hand and he said, "I have nothing to say," and at this time he had nothing to say but Jasper Johnson did show us by pointing and indicating just where Mr. Simmons who was the first one who was struck near the elevator was and Clarence Lofton put himself at the front door on the lookout.

Q. Turner did not take part as an actor in that scene in that room that day?

A. No, sir.][10]

CROSS-EXAMINATION.

BY MR. ROME:

Q. At the time you took this defendant up to the factory had he a lawyer with him?

A. No, sir.

Q. Was he informed that he had a right to have a lawyer?

A. No, sir.

Q. Did you know at that time that signed confessions had been obtained?

A. Oh, yes.

Q. Was this on your own instructions that these men be taken up to the factory?

A. By my own instructions?

Q. Yes.

A. I am under instructions of Lieutenant Kelly.

Q. Who told you to take them up to the factory?

A. He told me to take them up to the factory but we did that on all of them.

Q. I mean this case.

A. Yes, sir.

Q. Lieutenant Kelly told you to take the defendants up to the factory?

A. Yes, sir, to re-enact it.

Q. Can you tell me why these men were taken up there?

A. Well, it is a matter of evidence in our homicide case.

Q. Full confessions eventually had been taken from these men?

A. Yes, sir.

Q. It was still necessary to take them up there?

A. Yes, sir.

Q. What time of the day was it that they were taken there?

A. Four p. m., on June 10.

Q. How long were you there?

A. Oh, I guess about fifteen or twenty minutes.

Q. It is true, is it not, that Turner himself did not take any part in this re-enactment?

A. Yes, sir. He had nothing to say.

Q. Did he stay mute?

A. Yes, sir. He had nothing to say.

Q. Where did you return to after leaving the broom factory?

A. Back to City Hall cell room, the three of them.

BY MR. McCLAIN:

Q. Is it or is it not routine police business in such matters as this to have a re-enactment?

A. Yes, sir, we have been doing it for eighteen years.

BY MR. ROME:

Q. That is true that the re-enactment was going through despite the fact that you had full confessions then obtained?

A. Yes, sir.

BY MR. McCLAIN:

Q. Did the defendant ask you to get him a lawyer?

A. No, sir.

Q. Did he ask for a lawyer at all?

A. I knew he had asked Lieutenant Kelly or Lieutenant Kelly asked him, but I don't know which.

CHARLES E. MOORE (911 North Park Avenue), sworn. (Haddon Heights, N. J.)

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Did you have any connection with the Ace Broom store in Philadelphia?

A. Yes, sir.

Q. On June 10, 1946, were you present at the time this defendant, Aaron Turner, and one Jasper Johnson and one Clarence Lofton were brought to the premises in company with the detectives?

A. Yes, sir.

Q. Did you see what transpired at the Ace Broom premises on that day?

A. Yes, sir.

Q. What did you see?

A. Well, three colored men were brought in and several detectives who were in charge of this case and they asked whether or not the place was familiar to them and they said yes.

Q. What else happened?

A. Then one of the detectives asked one of the colored men just what had happened and he said ——

Q. Did he or did he not show him what happened?

A. What?

Q. Did the colored man show what happened?

MR. ROME: If your Honor please ——

BY THE COURT:

Q. Was the defendant there?

A. Yes, sir.

BY MR. McCLAIN:

Q. What did you see done in the presence of this defendant?

A. Well, one of them described ——

MR. ROME: He has not identified which one.

THE COURT: The detectives have already told us who they were. It is a general group of people. The police department had taken this defendant and his two friends.

BY THE COURT:

Q. Did this defendant say anything in front of you?

A. No, sir.

Q. Did the other two defendants?

A. Yes, sir.

Q. The other two did?

A. Yes, sir.

BY MR. McCLAIN:

Q. What did he do in the presence of this defendant?

A. Well, he related what had happened in the shop and said that two of them came in and this colored man hit one of the men on the head.

Q. What colored man?

A. He went through their pockets.

BY THE COURT:

Q. What colored man hit somebody on the head?

A. Well, there was three of them altogether. I am not acquainted with them by their names.

BY MR. McCLAIN:

Q. In your presence, Mr. Moore, was any threat made to this defendant or the other two men?

A. Oh, no, sir.

Q. Were they abused in your presence, in any way?

A. No, sir, they were treated very nicely, I thought.][11]

CROSS-EXAMINATION.

BY MR. ROME:

Q. You can't identify any one of these three men?

A. I can identify the one that the question was put to and he described what had happened there.

BY THE COURT:

Q. Do you remember this defendant?

A. Yes, sir. He was in the center of the three.

Q. Did you hear this defendant say anything at that time?

A. He said he did not have anything to say.

Q. You have said that when these three men were brought into the factory this defendant—they said the place was familiar to them?

A. Yes, sir.

Q. Did this defendant say that?

A. No, sir, he did not say anything. The first one did all the talking.

MRS. JULIA A. SIMMONS (883 North 22nd Street), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Mrs. Simmons, what relation were you to Charles Simmons?

A. I am his wife.

Q. When did he die?

A. December 21, 1945.

Q. You lived with him where?

A. 883 North 22nd Street.

[12]Q. On June 10, 1946, were you in the premises of the Ace Broom Company, 355-57 North 2nd Street, when the detectives came there?

A. Yes, sir.

Q. Was this defendant there at that time?

A. Yes, sir.

Q. Did you see and hear what happened?

A. Oh, yes.

Q. In your presence were any threats made to this defendant or either or both of the other colored men?

A. No, sir.

Q. Was there any violence given to them?

A. No, sir.

Q. What did you see happen or what did you hear?

A. The three men were brought in and this man was in the middle and the detective asked Johnson,

the short fellow, if he had ever been in that place before and he said, "Yes." Then the detective said, "Go ahead and tell us under what circumstances you were here," and Johnson went ahead and described the day that the crime took place and he described the incident.

Q. Did this defendant say anything?

A. They asked him if he wanted to say anything and he said he had no desire to talk.][12]

MR. McCLAIN: Cross-examine.

MR. ROME: No questions.

MR. SPIRDON KONDRATENKO (338 North 22nd Street, Philadelphia), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Mr. Kondratenko, did you go to the premises of the Ace Broom Company, 355-57 North 2nd Street, Philadelphia, Pa.?

A. Yes, sir.

Q. Shortly after December 15, 1945?

A. Yes, sir. I went there a week later.

Q. What was that?

A. My nephew's husband. They ——

Q. What did you find there?

A. I found a wallet.

Q. Where was the wallet?

A. It was in the coal box in the cellar.

Q. Did you find a key?

A. Yes, sir.

Q. Is that the key which you found (indicating)?

A. Yes, sir.

Q. Where did you find that key?

A. In the coal box.

Q. In the coal box in the cellar?

A. Yes, sir.

Q. Is that the pocketbook which you found in the coal box, too (indicating)?

A. Yes, sir.

Q. Where is that coal box located with reference to the front of the store?

A. In the front, because you come into the elevator. He said—I don't know ——

Q. Where is this coal box?

A. Right in the front.

Q. Close to the door?

A. Yes, sir.

Q. To whom did you give the key?

A. I told the manager, Mr. Moore, and he called the detectives.

Q. You gave it to the detectives?

A. Yes.

Q. Detective Fisher?

A. Yes, sir.

Q. How did you get it from the coal box in the cellar on the first floor?

A. The elevator comes down from the fourth floor to the cellar.

Q. How close is the elevator to the front door?

A. About eighteen inches.

Q. Eighteen inches from the front door?

A. No, sir, from the front.

Q. Does the elevator shaft run down to the coal box?

A. Yes, sir.

Q. Right next to it?

A. Yes, sir.

MR. McCLAIN: Cross-examine.

MR. ROME: No questions.

DETECTIVE WESLEY FISHER (No. 41), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Detective Fisher, on December 15, 1945, what time did you arrive, if you did, at the premises of the Ace Broom Company at 355-57 North 2nd Street?

A. I was notified at 5:25 p. m., and immediately I went there and arrived there, I would say, about 5:40 p. m.

Q. What did you do when you went there?

A. I saw two pools of blood and blood spattered over brooms that were stacked up between the door and the office.

Q. Had the bodies of the two men been removed then?

A. Yes, sir.

Q. Can you tell the Court and jury with reference to the elevator shaft, where this shaft is with relation to the front door of the building and the coal box?

A. Yes, sir, it is about five feet from the front of the building and it would be about seven feet from the elevator and the front door.

Q. The coal box is where?

A. It runs underneath the elevator into the front of the building and extends down under the elevator.

Q. In other words, they actually shovel coal and it is underneath the elevator?

A. Yes, sir. It is a space of three and a half to four inches on either side of the elevator. Between that and the floor, anything could drop down.

Q. Were you given this pocketbook and key?

A. Yes, sir.

Q. By whom?

A. By the last witness, but I can't pronounce his name.

Q. When were you given that key and wallet?

A. I was given that on January 21, at 1:05 p. m.

Q. Was this pocketbook identified by anybody in your presence?

A. By Mrs. Simmons, as the property of her husband and his name and address is in there on an identification card.

Q. Was the key identified by anyone in your presence?

A. Yes, sir. On January 22nd I went to the home of Frank Endres, 309 Pemberton Street and I talked to Mrs. Endres and I asked her to let me see her keys to the front door. She showed me the key and I got the key and then I tried it in the lock and it opened the door.

MR. McCLAIN: Cross-examine.

MR. ROME: No questions.

DETECTIVE THOMAS LENNON (223), sworn.

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Detective Lennon, did you accompany Detective Fisher to these premises on December 15, 1945?

A. Yes, sir.

Q. You corroborate the testimony that he gave?
A. Yes, sir.

MR. McCLAIN: Cross-examine.

MR. ROME: No questions.

MR. McCLAIN: Your Honor, I offer the key and the pocketbook in evidence and that is the Commonwealth's case.

THE COURT: Members of the jury, you might realize that this is a homicide case and we cannot separate the jury. The jury will be provided with proper accommodations at the Adelphia Hotel and this case will be resumed tomorrow morning at ten o'clock.

Philadelphia, Pa., September 26, 1946.

SECOND DAY.

(Conference at side bar.)

MR. ROME: I ask for an exception to the admission in evidence of the Magistrate's testimony read to the witnesses, Lieutenant Kelly, Sergeant Riccardi and Detective O'Mahoney: also as to anything relating to the Magistrate's testimony: Also I ask for an exception to the reading into evidence of the confessions; also exception to the admission of testimony relating to the re-enactment of the crime.

THE COURT: Exceptions may be noted as requested.

DEFENDANT'S TESTIMONY.

(Mr. Rome opens to the Jury for the defendant.)

AARON TURNER, defendant, being duly sworn, was examined and testified as follows:

BY MR. ROME:

Q. What is your full name?
A. Aaron Turner.
Q. Where do you live?
A. 720 South Mervine Street.
Q. That is in Philadelphia?

A. Philadelphia.

Q. How old are you?

A. Twenty-six.

Q. Where were you born?

A. Marshville, North Carolina.

Q. Have you brothers and sisters?

A. Yes.

Q. How many?

A. Four brothers and three sisters.

Q. Did you go to school?

A. Yes.

Q. To what grade?

A. The 6th Grade.

Q. Where did you go to school?

A. Marshville, North Carolina, my home town.

Q. Then what happened after the sixth grade?

A. My mother died, and I had to stop school.

Q. Then what did you do?

A. I worked—I helped to support my two younger sisters.

Q. Where did you work?

A. I worked at a saw mill, and farm work.

Q. In and about Marshville, North Carolina?

A. That is right.

Q. Where else have you worked?

A. Since 1939, in Philadelphia, for a chicken market on Front Street, and on the waterfront as a longshoreman.

Q. You came to Philadelphia in 1939?

A. Yes.

Q. You have been here ever since?

A. Yes.

Q. Where have you lived in Philadelphia?

A. 415 South 11th Street, number 1213 Catherine Street, and 1309 Kimball Street.

Q. Where do you live now?

A. 720 South Mervine Street.

Q. Where were you living December 15th, 1945?

A. 720 South Mervine Street.

Q. Where were you living on June 3rd, 1946?

A. 720 South Mervine Street.

Q. Had you been living at that Mervine Street address from December 15th, 1945, to June 3rd, 1946?

A. Yes.

Q. Had you been out of Philadelphia at any time during that period?

A. No, sir.

Q. You were in Philadelphia all that time?

A. Yes.

Q. Working on and off in Philadelphia during that time?

A. Yes.

Q. At the jobs which you have described?

A. Yes.

Q. Heavy labor?

A. Yes, sir; loading trucks along the water front.

Q. When were you arrested?

A. June 3rd, at 12:15.

Q. Where were you arrested?

A. At the southeast corner of 12th and South Streets.

Q. That was June 3rd, 1946?

A. Yes.

Q. What were you doing at the time?

A. I was going across the street to a restaurant.

Q. At 12th and South Streets?

A. Yes.

Q. Who arrested you?

A. Detective Thompson and Detective O'Mahoney.

Q. What did they say?

A. Detective Thompson called me and said, "Come here, boy." He asked, "Have you been in the Navy?" I said, "No, sir." I ran my hand in my pocket to get my wallet and show my credentials, and he said, "Get in." I got in the back seat and he told Detective O'Mahoney to get in the back with me. He frisked me, and said, "He is not the one." O'Mahoney said, "Let's turn him loose," and he said, "No; we will go up here and then turn him loose." He said, "You haven't done anything?" and I said, "No, sir."

Q. Where did they take you?

A. To the City Hall.

Q. What time did you get to the City Hall?

A. I would say about 12:30.

Q. Where did they take you in the City Hall?

A. We walked up to the 6th Floor.

Q. What happened there?

A. We went in the door, rang a bell; he walks up and said, "This is a lot of crap about the Navy. You know what we have you for." I said, "No, I don't." Then, Detective Thompson went to kick me.

Q. Where?

A. On the leg. The man opened the gate and walked me in the gate. He took my suspenders off, and he took me back to the cell room. He goes back, and he said ——

Q. Who?

A. Thompson. He said, "Who is Willie—who is "Fats", and several other names.

Q. What did you say?

A. I said, "Some I know, and some I don't."

Q. Were you in the cell at the time?

A. No, sir.

Q. What kind of a room were you in?

A. I was in front of a cell. So, the old gentleman —the turnkey—came back and opened the cell and put me in.

Q. Who was there besides Detective Thompson and Detective O'Mahoney?

A. They were the only two detectives there.

Q. Were you forced to go in the cell?

A. I was.

Q. Were you questioned any other time during that day?

A. Yes; about five minutes, they came back to me.

Q. Who?

A. Detective Thompson and Detective O'Mahoney.

Q. They both came back?

A. Yes.

Q. What happened?

A. Detective Thompson said, "Who is 'Fats'?"

Q. What did you say?

A. I said I couldn't say. He said, "Who is 'Play-

boy'?" I said, "I couldn't tell you." Mr. Thompson, he said, "You are going to tell us before we get through with you—you will tell us." The turnkey opened the door after five minutes more; so Detective Thompson and O'Mahoney came in. They said, "Take off your coat,"—Detective Thompson said that. So, I pulled off my coat, and Detective Thompson made me stand like this (illustrating), and rolled up my pants leg, and began to kick me in the leg. Then, Detective O'Mahoney appeared on the other side and caught me in the leg—the front of the leg. So, I came out, and he said, "Stand up," and he goes to punching me in the stomach.

Q. Who?

A. Detective Thompson; and Detective O'Mahoney twisted my arm so I fell. Then, Detective Thompson began to kick me, and I tried to cover up that way (illustrating), to stop him from kicking me in the face. Then I was taken again to the cell. Then I got up on the stool, and Detective Thompson makes me sit and face him like this (illustrating), and I said, "Mr. Thompson, I don't know anything; I don't know what you have me for." Then I said, "I have a hernia; please don't kick me." He said, "I'm glad to know that; your guts will be hanging out before I get through with you."

Q. Who said that?

A. Detective Thompson. O'Mahoney said, "Get down off the stool before he hurts himself." He gets down and kicks me on the leg—Detective Thompson.

Q. How long did that questioning continue?

A. About an hour.

Q. Then what happened after they left?

A. After they left, he came back in five minutes—both of them, Detective Thompson and Detective O'Mahoney.

Q. And questioned you again?

A. He asked me who was Jasper Johnson.

Q. Who asked that?

A. Detective Thompson. I said, "I don't know that name, sir." So, he pulled out some photographs, and he said, "Do you know this boy?" I said, "Yes, I know him as James." He said, "All right." So he goes away—Detective Thompson—and O'Mahoney, he goes away, and the turnkey comes around and takes me to a little office to Lieutenant Kelly.

Q. This was still on June 3rd?

A. Yes.

Q. The first day you were arrested and brought to City Hall?

A. That is right.

Q. What happened in Lieutenant Kelly's office?

A. I came in and he asked me to sit down. Lieutenant Kelly questioned me and asked, "How far can you remember back?" I said, "Pretty good." He said, "Where was you on Thanksgiving?" I said, "I can remember part where I was, because I took a car ride." He said, "How do you know it was Thanksgiving?" I said, "What makes we know, we had an accident with a taxicab and a machine; that is how I know."

Q. Did Lieutenant Kelly ask you other questions?

A. Yes.

Q. Did he ask if you knew about the crime taking place at the broom factory?

A. Not at that time.

Q. He did not ask you anything about that job?

A. No.

Q. What did he ask you?

A. He asked if I knew Clarence Lofton, and I said yes. He said, "They have opened up on you. You were at the same place, drinking, and the blonde waitress identified you on Callowhill Street."

Q. Lieutenant Kelly said, "They have opened up on you?"

A. Yes.

Q. Go ahead.

A. I said, "I am willing to go any place with you. I don't know anyone on Callowhill Street; I have never been there."

Q. You were never there, on Callowhill Street?

A. No, sir.

Q. At any time during the time you were living in Philadelphia?

A. No. The street sergeant there—I don't know his name ——

Q. Sergeant Riccardi?

A. Yes. He said, "Answer the questions right," and punched me in the face. I said, "I am answering all I know." So, they took me back to the cellroom. Detective Thompson comes back, and said, "I am going home, and I will put on my brogue shoes, and

when I come back I will fix you." I said, "There is nothing I can do about it. May I make a phone call? Maybe someone will get a copy to get me out." He said, "You will not call anybody or let anyone know where you are at. You will be way up high—you will be beaten to death."

Q. Who said that?

A. Detective Thompson.

Q. What time were you finally permitted to go to sleep the night of June 3rd?

A. I would say about eleven o'clock.

Q. Had they questioned you during that evening?

A. Yes.

Q. What detective officers questioned you during that time?

A. Detective Thompson and Detective O'Mahoney, and the other gentleman—I don't see him.

Q. Did Lieutenant Kelly question you the night of June 3rd?

A. Yes, when I was in his office that night.

Q. Did Detective Cleary question you that night?

A. No, sir.

Q. Did they question you again on June 4th?

A. Yes.

Q. For how many hours during the day?

A. I would say three and a half hours.

Q. They questioned you the night of June 4th as well?

A. Yes, until about ten-thirty.

Q. Until about ten-thirty that night?

A. Yes.

Q. Starting when?

A. At about five o'clock, after the feed.

Q. They gave you a meal about five o'clock—around dinner time?

A. Yes.

Q. Did the same officers question you on the 4th?

A. Detective O'Mahoney and Detective Thompson.

Q. They were the chief ones?

A. Yes.

Q. Any others?

A. Yes, the sergeant.

Q. Sergeant Riccardi also?

A. Yes.

Q. Was anything said on Tuesday, June 4th, that you were going to be taken to another police station?

A. No, sir. On June 4th—on a Wednesday—I was taken to the station house.

Q. Where—15th and Snyder Avenue Station House?

A. Yes.

Q. That was Wednesday, June 5th?

A. Yes.

Q. To go back to June 4th—you said you were questioned?

A. Yes.

Q. Were you beaten that day?

A. Yes, they beat me in the daytime.

Q. And in the evening?

A. Yes.

Q. By whom?

A. Detective Thompson and Detective O'Mahoney.

Q. Anyone else?

A. No, not then.

Q. How did they beat you?

A. Detective Thompson came around and said, "Can you take it?" I said, "No, sir, but I have to. I don't know why you beat me; I have not resisted arrest—I haven't done anything." He said, "You won't take it. Pull off your coat and stand up." He brought me before the light and stands me up like this, then he kicks me on the legs. Then he makes me hold my hands out—look at the watch. I held my hands like that, and when my hands came down, they had a stick—if I let my hands down, they beat me on the hands with the stock every time my hands came down.

Q. After June 4th, did they ask you about the alleged crime at the broom factory?

A. June 4th?

Q. Tuesday—the second day of your arrest.

A. Yes.

Q. They did ask questions?

A. Yes.

Q. What did you tell them?

A. That I don't know anything about it.

Q. Do you know anything about it?

A. No, I do not.

Q. Did you participate in that crime?

A. No, sir.

Q. Were you at the broom factory December 15th or any other day?

A. No, sir.

Q. Have you ever been to that broom factory?

A. Never.

Q. They took you to 15th and Snyder Avenue on the 5th?

A. Wednesday.

Q. What time of day did you get down there?

A. I would say Detective Thompson came around about nine-thirty, called me out to get my stuff, and there I walked out in front of some gentlemen to identify me.

Q. Where was that—at 15th and Snyder or at City Hall?

A. At City Hall. So, I walked by the cell for the gentlemen to identify me.

Q. Who were they—anyone you knew?

A. No one I knew. They said, "No, sir," and they took me back in the cell.

Q. I asked you what time did you get down to 15th and Snyder Avenue?

A. I would say I got there about twelve o'clock.

Q. What did they do with you down there? Were you in a cell?

A. No; I sat there handcuffed, with Lofton.

Q. Lofton was taken there from City Hall to 15th and Snyder Avenue?

A. With me, yes.

Q. Was Johnson also taken there?

A. No.

Q. Just you and Lofton?

A. Yes.

Q. Then what happened?

A. I sat there about an hour, and Detective Thompson and Detective O'Mahoney and the sergeant came out.

Q. Sergeant Riccardi?

A. Yes.

Q. Then, did they question you?

A. Yes.

Q. How long did they question you?

A. I would say one hour and a half.

Q. In a cell, or outside?

A. No; they took me in a dark room and pulled down the windows.

Q. What do you mean by a dark room?

A. They had curtains like blackout curtains.

Q. There were electric lights in the room?

A. Yes.

Q. They were on?

A. Yes.

Q. By a "dark room," you mean the curtains were pulled down?

A. Yes.

Q. They questioned you there?

A. Yes, they questioned me.

Q. For how long?

A. I would say at least one hour and a half.

Q. Then they went away?

A. No; Detective Thompson said, "Stand up and pull your coat off." He first got behind me and started hitting me pretty hard, and punching me up here (indicating). Detective O'Mahoney twisted my

hand; then Sergeant Riccardi came and gave me lugs in the jaw. Then they took a chair and started to beat me.

Q. You are sure of this?

A. Yes.

Q. Remember, you are telling this under oath.

A. Yes.

Q. This actually happened?

A. This actually happened.

Q. What time of night were you permitted to go to bed?

A. Detective Thompson left me at eleven o'clock that night.

Q. You had been questioned up until that time on and off?

A. Off and on.

Q. What happened on Thursday, June 6th?

A. On Thursday, June 6th I guess I got there about eight-thirty.

Q. Did you say at 15th and Snyder Avenue?

A. That is right.

Q. All that day, or did you come back to City Hall that day?

A. I stayed there Wednesday and Thursday.

Q. Then you came back to City Hall on Thursday?

A. That's right.

Q. Were you questioned again?

A. After eleven that night?

Q. On Thursday, after you came back to City Hall.

A. That is right.

Q. You were questioned again?

A. Yes.

Q. By the same officers?

A. Yes.

Q. During any of this time had you been able to get in touch with anyone that you knew, outside of the police?

A. No. I asked Detective Thompson could I make a phone call.

Q. You asked where?

A. Twice—after I got back to City Hall, and I asked the turnkey. I said, "Sir, I have a dollar you can buy a cigar with if I can make a phone call." He said, "I cannot do anything for you because you are under the authority of the detectives." He said, "Here is a Testament for you."

Q. That is, a Bible?

A. Yes, a Bible.

Q. That is the Bible you have there?

A. Yes. He said, "You take the Bible and be contented. I cannot do anything for you."

Q. About how long were you questioned on Thursday, June 6th?

A. Thursday, to the best of my recollection, around five o'clock they had us—from then to ten or ten-thirty.

Q. About five hours, you would say, that day?

A. Yes.

Q. By the same officers?

A. That's right.

Q. Were you touched at all during any time that day?

A. Yes.

Q. By the same officers?

A. Detective O'Mahoney came around with Detective Thompson. He said, "Are you ready to come along? Are you ready to talk?" "I don't know what to talk about, sir." "Don't you want to help yourself?" "Yes, but there is nothing I can do. I didn't resist arrest, and there is nothing I can do about it." He said, "Come on; we haven't beat you. You won't have to worry; you will be beat to death."

Q. Up to the 6th, you were still maintaining your innocence of the crime, were you?

A. Yes.

Q. What time of night did you get to bed Thursday, June 6th, if you remember?

A. I would say about ten-thirty.

Q. That was at City Hall?

A. That's right.

Q. Were you questioned Friday, June 7th?

A. Friday, June 7th, Detective Carey came around, I would say; about four o'clock—Detective Carey came around with no hat and no coat—polo shirt and pants—and he said, "Are you 'Treetop'?" I said, "That is what they call me. My name is Aaron." He said, "The boys have opened up on you." I said, "No one has opened up on me." He said, "Have they beat you?" I said, "Yes." He said, "They are going to continue to beat you, because they think you are lying." I said, "There ain't nothing I can do about it."

Q. Did you tell Detective Carey that you were telling the truth?

A. Yes.

Q. Did you tell him that you didn't know anything about the crime?

A. That is what I told him.

Q. Did he tell you what you should do?

A. He said, "You had better come along or they will continue to beat you; they will take you from City Hall again."

Q. They did not take you from City Hall then, did they?

A. No, sir.

Q. Do you remember Saturday morning, June 8th?

A. Yes; Saturday morning, June 8th, about nine o'clock, Detective Thompson was the first one I remember seeing. Detective Thompson came around and talked to me: He took me by the window, and he talked to me. He said, "You will be all right. When you go down there, you go on the mercy of the Court."

Q. He told you you were going to court or to the magistrate?

A. No; he said, "When you come to court, come in under the mercy of the Court." He had a milk bottle with some whiskey, and he said, "We are going to the magistrate this morning; get your nerves up."

Q. He gave you a drink, did he?

A. Yes.

Q. You drank it?

A. Yes.

Q. Do you remember what time you went before the magistrate that day?

A. I would say about eleven o'clock.

Q. Do you remember being warned by the district attorney, at the magistrate's hearing, that you did not have to say anything?

A. Yes.

Q. That anything you did say might be used against you?

A. Yes.

Q. They swore you in at the magistrate's hearing: do you remember that?

A. I think so.

Q. Do you remember being asked by the district attorney, "Do you want to say anything?"

A. Yes.

Q. What did you reply?

A. I told him no.

Q. What did you mean by that?

A. Because I didn't know anything ——

MR. McCLAIN: Objected to. He said, "No, sir."

THE COURT: Objection sustained.

(Exception to defendant.)

BY MR. ROME:

Q. You did go on and answer questions?

A. Yes.

Q. The district attorney continued to ask questions?

A. Yes.

Q. Why did you continue to answer those questions?

A. I didn't know anything to say.

Q. But you did continue to answer the questions the district attorney put to you?

A. He just asked did I have anything to say, which I said, "No, sir."

Q. But you did continue to answer the questions the district attorney put to you after that?

A. I don't remember him asking me anything more.

BY THE COURT:

Q. You do not?

A. It is the only thing I remember him saying anything.

BY MR. ROME:

Q. At the time you were taken before the magistrate, had you signed a confession?

A. No, sir.

Q. You had not?

A. No, sir.

Q. Do you remember signing a so-called confession?

A. Yes.

Q. Do you remember about when it was?

A. It was between the 10th and the 12th.

BY THE COURT:

Q. Of what—June?

A. June 10th—between the 10th and the 12th of June.

BY MR. ROME:

Q. After the magistrate's hearing?

A. Yes; that's right.

Q. Do you remember where you were the night you signed it?

A. Yes; in front of the cellroom, in a small room, out of the cell.

Q. In City Hall?

A. Yes.

Q. Do you remember when it was you were taken finally to Moyamensing Prison?

A. Yes; the 12th of June, about two o'clock.

Q. You had been held by the police during the entire time in between?

A. That is right.

Q. Aaron, do you remember the night of Friday, June 7th, before the magistrate's hearing?

A. Yes.

Q. You have said you were questioned that night, haven't you?

A. Yes.

Q. Do you recall that night particularly well?

A. Yes.

Q. Can you tell us why?

A. Yes.

Q. What happened that night?

A. Well, that night, sir, Detective O'Mahoney, when I first came out of the cell, after I ate, Detective O'Mahoney brought me from the cell to make me remember. He called me in front of Lieutenant Kelly, in front of the window. Lieutenant Kelly sat in a chair and I did, and Lieutenant Kelly said, "I don't like you anyhow; you are very stubborn." He said if he had his way with me he wouldn't waste time with me, he would throw me down the damn elevator and make me break my neck. He said, "I haven't any use for niggers anyhow." Then he came away and he said, "I will get them after you." And then Detective O'Mahoney came back again. He said, "You have something on your mind, don't you? Don't you want to talk to me?" I said, "Yes, I have. I don't want you to beat me." He said, "Well, we will beat you again." He said, "The boys have opened up on you." I said, "No, they haven't, because no one knows anything about me to open up on." Then, Detective O'Mahoney takes me in the office. So, he talks to me, and Detective Carey. So, Detective Carey gets a stick and he talks to me—Detective Carey. So, he told Detective O'Mahoney that he couldn't do anything with me—"he won't tell the truth, and I cannot do anything with him." De-

tective O'Mahoney said he would talk to me, because he didn't want to see a black man beat a black man. So, he told Detective Carey he could go out and eat. So, he and Detective O'Mahoney sat down there. He got his stick, and he would talk, and he would talk, and he would talk. So, then Detective Fisher came in. So, then Detective Carey came back after he had eaten, so he told Detective Carey to take over.

Q. Who told Detective Carey to take over?

A. Detective O'Mahoney told him to take over. When O'Mahoney came back, Carey said, "He will not tell the truth." So, Detective O'Mahoney made me stand up and put my hands out like that (illustrating) for an hour and ten minutes. He beat me with the stick, and every time my hands came down he hit me across the hand like that (illustrating).

Q. Have you any marks on the right hand?

A. Yes, there is a knot here.

BY THE COURT:

Q. How long have you had it?

A. Since June 7th.

Q. What about your body?

A. I have marks around here (indicating).

Q. You have bruises there?

A. Yes; and here (indicating).

Q. On your body?

A. Yes. And the detective there, with glasses on, he washed my shoes.

BY MR. ROME:

Q. Why?

A. Because there was blood on my shoes, and it didn't look so good. He says, "When you go back in the cell we will wash your shoes out."

Q. Have you still got those shoes?

A. Yes.

Q. Is there still any marks on them?

A. Yes, I have blood in the shoe.

Q. Aaron, do you know Jasper Johnson?

A. Yes, I do.

Q. Do you know Clarence Lofton?

A. Clarence Lofton, yes.

Q. Have you ever had any trouble with Jasper Johnson?

A. We have had little fights.

Q. Do you remember when you had the little fight?

A. April—some time in April.

Q. What year?

A. 1946.

Q. Have you ever had any trouble with Lofton?

A. No, sir. Some friends of mine beat Lofton up and broke his jaw.

Q. He said you were in on it?

A. Yes, he accused me of it.

Q. Did you ever go around with Lofton?

A. No.

Q. Or with Johnson?

A. No.

Q. When did you first actually meet Lofton?

A. I would say in February—February or March, I would say definitely.

Q. 1946?

A. Yes.

Q. You have known Johnson a long time?

A. I have known Johnson a long time.

Q. At any time from June 3rd until you were finally taken to Moyamensing Prison, did you ever consult a lawyer?

A. Yes.

Q. During the time from June 3rd to July 12th, 1946, you saw a lawyer?

A. No, I did not.

Q. Did you ever ask for a lawyer?

A. No, sir.

Q. And you did not get a lawyer?

A. No, sir; never.

Q. Did you see anyone that you knew, outside of the police, during that period of time?

A. No, sir.

Q. Where were you on December 15th, 1945?

A. It is close to ten months ago, and I couldn't say.

Q. Were you at the broom factory on December 15th?

A. No, sir.

Q. Were you anywhere near the broom factory?

A. No, sir; definitely, no.

Q. At any time?

A. No, sir, never.

CROSS-EXAMINATION.

BY MR. McCLAIN:

Q. Turner ——
A. Yes.
Q. —you were sworn today, were you not?
A. Yes.
Q. And you were sworn before the Magistrate, were you not—Magistrate Williams?
A. Yes.

BY THE COURT:

Q. Was he a white or colored man?
A. He was white.

BY MR. McCLAIN:

Q. You were sworn by Magistrate Williams on June 8th, in City Hall?
A. Yes.
Q. You were sworn there on the Bible to tell the truth. Did
A. I had to.
Q. Did you—yes or no?
A. Yes.
Q. You know Jasper Johnson, alias "Fats," don't you?
A. Yes.
Q. You know Clarence Lofton, don't you?

A. Yes.

Q. You said you had a little trouble with Jasper Johnson some time in April—a little fight; it wasn't much, was it?

A. No.

Q. You never had trouble with Clarence Lofton?

A. Definitely, no.

Q. You never had any trouble with Lofton?

A. No.

Q. You have known Lofton how long?

A. Definitely, I would say February or March.

Q. You knew him before that, didn't you?

A. No, sir.

Q. How long have you known "Fats"?

A. I would say a year, sir.

Q. How often did you see "Fats" during the year that you knew him?

A. I know he used to work at the Lincoln Fruit Market—the Lincoln produce market on South Street. That is where I saw him.

Q. You saw him often and passed the time of day with him?

A. No, sir.

Q. When you saw him, you said, "How do you do"?

A. Yes.

Q. After April, you said, "How do you do" to Johnson when you saw him?

A. Yes, when I saw him.

Q. After the little trouble you had with him, you said, "How do you do" to Johnson—that was all over?

A. No, we didn't have anything to say.

Q. You had no other trouble with him?

A. No.

Q. Can you give any reason why Johnson and Lofton would sign such statements as they did, in your presence, if they are not true?

A. They are not true.

Q. Would they say things that were not true about you and them?

A. If a man is like I was, they will say anything.

Q. We will come to that. You are how old?

A. Twenty-six.

Q. You have lived in Philadelphia since 1939?

A. Yes.

Q. You remember when Detective Thompson used to be a police officer on the beat near where you lived, do you not?

A. No, sir.

Q. You never knew him before?

A. Yes, I knew him, but he was not on the police there.

Q. You never had any trouble with Thompson? You passed the time of day with him, too, did you not?

A. Sure.

Q. You were up in the cellroom in City Hall, were you not, with Lofton and Jasper Johnson, alias "Fats"?

A. I was locked by myself.

Q. You talked to them over the top or around the side of the cell at times?

A. No, sir.

Q. Didn't you say to Jasper Johnson at one time, up in the cellroom,—didn't you say, "Lofton has squealed, but it is two against one, 'Fats;' you keep your mouth shut"? Didn't that happen?

A. No, sir.

Q. You were taken with Lofton to 15th and Snyder after that?

A. Yes.

Q. Didn't you say that—at 15th and Snyder—"Keep your mouth shut; there is a dictaphone in the cell"?

A. No, sir.

Q. You did not say that?

A. No, sir.

Q. How many times would you say you were beaten up?

A. From the 3rd until Friday.

Q. Friday was the 7th.

A. Yes.

Q. So, for four days you say you were beaten up?

A. Yes.

Q. You know there is a police surgeon in the sheriff's cell room in City Hall, do you not?

A. No, sir.

Q. Did you ask for a doctor?

A. No, sir. Detective Thompson and Detective O'Mahoney bandaged me.

Q. Where were you hurt?

A. On the leg.

Q. Were you bandaged Friday, June 6th?

A. Yes.

Q. Where did they bandage you—on the leg?

A. Yes.

Q. Why didn't you show the bandages to Magistrate Willianis when you were under oath in the magistrate's court?

A. I was afraid back in City Hall I would get the same thing. He told me before I went down there.

Q. How many times were you beaten up?

A. I couldn't call the times.

Q. Five, ten, fifteen times? How many times do you say you were struck?

A. It was more than ten or fifteen.

Q. And you were taken to Moyamensing Prison on the 12th, you say?

A. Yes.

Q. Did you ask for a physician or go on sick report there?

A. I did, yes.

Q. On sick report?

A. Yes.

Q. What was that for?

A. I had to see the doctor.

Q. What was that for?

A. They gave me salve to fix me up.

Q. What for?

A. To help my leg.

Q. You had that lump on your hand long before June 12th, did you not?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Some of the detectives were kind and friendly with you, were they not?

A. No, sir.

Q. Didn't they give you candy and cigarettes?

A. No, sir.

Q. They never did?

A. No, sir, not after June 3rd. June 7th, Friday, I gave Detective Fisher one dollar, and Sunday morning he gave me a sandwich, candy and a pack of cigarettes.

Q. Did Detective Fisher ever beat you up?

A. Yes, he did—on Friday.

Q. He did?

A. Yes; with a blackjack.

Q. When was that?

A. Detective O'Mahoney struck me with a rubber hose.

Q. Who had the rubber hose?

A. Detective O'Mahoney.

BY THE COURT:

Q. You talked about a stick, not a blackjack or a rubber hose.

A. Yes.

Q. Fisher beat you with a blackjack?

A. Yes.

Q. And O'Mahoney with a rubber hose?

A. Yes.

BY MR. McCLAIN:

Q. You can read and write, can you not?

A. Yes.

Q. Where were you when you signed your name to this statement?

A. I was in a little room in front of the cell.

Q. That is your signature there? Look at it.

A. Yes.

Q. Did you see Johnson sign it in front of you?

A. No, sir.

Q. He did not sign it in front of you?

A. No, sir.

Q. Did Clarence Lofton sign it in front of you?

A. No.

Q. What about Jasper Johnson's confession—that is your signature on it, is it not?

A. That is right.

Q. When did Johnson sign that one?

A. I don't know.

Q. When did Lofton sign it?

A. I don't know, sir.

Q. When did you sign it?

A. Between the 10th and the 12th.

Q. Where?

A. In the little room.

Q. Take Lofton's confession—that is again your signature, is it not?

A. That is right.

Q. When did Clarence Lofton sign that?

A. I don't know.

Q. When did Johnson sign Lofton's confession?

A. I don't know.

Q. They are all signed on each page?

A. Yes.

Q. This is your signature (indicating)?

A. Yes, sir.

Q. You did not see Lofton sign it?

A. No, sir.

Q. Did Jasper Johnson sign it?

A. No.

Q. This is Jasper Johnson's statement: you have identified your signature on the first page. Is that your signature on the second page there?

A. That is my signature.

Q. Is this your signature on the last page of Jasper Johnson's statement or confession?

A. That is right.

Q. You signed every page of your own, did you not?

A. I don't know how many I signed.

Q. Look—is that your signature?

A. That is right.

Q. This is your signature on the last page of this?

A. Yes.

Q. You can read, can you not?

A. Yes.

Q. You were down before the detectives with Clarence Lofton and Jasper Johnson at times, were you not?

A. In front of the detectives?

Q. Yes.

A. Yes.

Q. You know where Dock Street is, do you not?

A. Dock Street?

Q. Dock Street, Philadelphia?

A. Yes.

Q. Where is it? It is along the river, is it not—near the river?

A. Yes.

Q. You worked there?

A. On Front Street.

Q. Do you know where 2nd and Callowhill Streets is?

A. Yes.

Q. You have been up that way, haven't you?

A. No, sir.

Q. Never?

A. No, sir.

Q. Before you signed this statement, this question was in here—you were asked, "Can you read and write?" and you said, "I can read pretty good." That is right, isn't it; you can read pretty good?

A. Yes, I can read all right.

Q. You remember the time your statement was taken, don't you?

A. Yes.

Q. Where were you when it was taken?

A. I was in a little room near the cellroom.

Q. You were?

A. Yes.

Q. Did they ask you your name?

A. Yes.

Q. You answered, "Aaron Turner"?

A. Yes.

Q. That is your name. He asked how old you are?

A. Yes.

Q. How old are you?

A. Twenty-six.

Q. The question here is, "How old are you?" and the answer is, "Twenty-six." That is right?

A. Yes.

Q. Then you said you lived at 720 South Mervine Street?

A. Yes.

Q. In this statement you said 730 South Mervine Street?

A. Yes.

Q. So far, this statement is right, is it not?

A. No, sir.

Q. These three questions—the three that you answered—that your name is Aaron Turner; that you are twenty-six years old; that you live at 720 South Mervine Street, that is right so far, is it not?

A. Yes.

Q. Then they asked why you were arrested?

A. No, sir.

Q. You said you signed the statement after the hearing before the magistrate?

A. Yes.

Q. So you did know why you were arrested, because you were in the magistrate's court and heard what was said, didn't you?

A. Yes.

Q. So you knew why you were arrested?

A. Yes.

Q. Now you do remember why you were arrested, at the time you signed the statement, do you not?

A. Yes.

Q. You heard what Lieutenant Kelly said—said under oath before the magistrate about you, didn't you? You heard Lieutenant Kelly, before the magistrate, testify?

A. I heard him say, but I don't know what he said.

Q. You heard what Jasper Johnson said before the magistrate, didn't you—your pal?

A. (No reply.)

Q. Answer the question, please.

A. Yes, I heard him.

Q. You heard Clarence Lofton—you heard what he said before the magistrate, didn't you?

A. He didn't say anything—not Lofton.

Q. You heard what Jasper Johnson said?

A. Yes.

Q. Then, having heard those statements in open court before the magistrate, as to what you had done, notwithstanding that, you signed the statement?

A. I had to sign it.

Q. You signed it?

A. Yes.

Q. You knew why you were arrested. You were called and asked the question, "Do you know why you were arrested?" and you answered, "Yes, for murdering two men in a broom factory." You said

you didn't do it, but that is why you were arrested—because you were accused of it?

A. I had to say it—yes.

Q. You said it?

A. I had to say it.

Q. Do you remember being told this: "You understand anything you say in this statement, or anyone you mention, can and will be used against you, and anyone you mention at the time of your trial in court"? Do you understand that?

A. No.

Q. That question was asked?

A. I don't remember.

Q. Don't you remember saying, "Yes"?

A. No, sir.

Q. What about before the magistrate, in the court room with everyone in it—spectators around—a public court: you remember that?

A. No one around but detectives and me.

Q. Saturday, June 8th?

A. No, sir; just me and the detectives.

Q. You know courts are public—anyone can come in at any time that it is in session?

A. I didn't know it was in session.

Q. You remember the assistant district attorney being there?

A. Yes.

Q. You remember D. Barlow Burke, a sworn officer of the court, acting as assistant district attorney, —you remember that?

A. Yes.

Q. At the magistrate's hearing, after you were sworn, you never said a word about being beaten or abused?

A. No, sir; I was scared.

Q. In view of everyone in the court room, you said nothing about being beaten, did you?

A. No, sir.

Q. Yet you come into open court and say you were scared?

A. Yes, I was scared.

Q. You said you did not hear what Lofton said, under oath, before the magistrate, but you did hear what Jasper Johnson said under oath?

A. Yes, I heard Jasper Johnson.

Q. You also say you heard the district attorney say something to you, and you did not want to say anything, but nevertheless you did answer because you thought you had to; is that correct?

A. Yes.

Q. Do you remember D. Barlow Burke, the district attorney, saying this to you and Johnson and Lofton, before you were sworn by a magistrate of the City of Philadelphia, Judge Williams—do you remember this being said to you: "Do any of you men"—meaning you, Johnson and Lofton—"want to say anything this morning? I want to warn you that anything said by you may be used against you in court, and you don't have to say anything if you don't want to. I understand, however, you have made statements to the officers and signed them"? Do you remember that?

A. No, sir.

Q. It was at the beginning of the hearing?

A. That is right.

Q. You did not say you had not made a statement?

A. No, I did not.

Q. Jasper Johnson was asked, "You have made a statement to the officers" and Jasper Johnson said, "Yes, sir," in your presence, and Mr. Burke asked Johnson, "Do you want to say anything?" and Jasper Johnson said, "Yes," and Jasper Johnson was sworn in your presence?"

A. Yes, sir.

Q. You were there?

A. Yes.

Q. Weren't you there?

A. Yes.

Q. Or weren't you interested?

A. Yes.

Q. You were interested in what was going on—you want the jury to understand you had nothing to do with the matter, or you stood silent?

A. Yes.

Q. You did not listen?

A. I think the reason I didn't have anything to say ——

Q. You were before the magistrate, a sworn public officer, in court, when Johnson said this: "By Mr. Burke: What is your name?" Answer, "Jasper Johnson." That is correct, isn't it?

A. Yes.

Q. His name was Jasper Johnson?

A. Yes.

Q. "Are you also known as James Johnson?" You said you knew him as James?

A. Yes.

Q. Also as "Playboy"—did you know him as "Playboy"?

A. No, sir.

Q. Or as "Fats"?

A. No, sir.

Q. "What is your residence? Answer, "620 South 13th Street."

A. No, sir, I didn't answer. I didn't know where he lived.

Q. "You have heard the testimony of Lieutenant Kelly before His Honor this morning?" He said, "Yes." You said you heard it, too?

A. Yes.

Q. You heard Lieutenant Kelly, before the magistrate?

A. Yes.

Q. So you knew what you were arrested for?

A. (No reply.)

Q. "Do you want to add anything to that?" Johnson said, "Yes." "Were you connected with the activities that Lieutenant Kelly testified to?" and he answered, "Yes." "Were you involved in the homicide of Charles Simmons and Frank Endres?" and he answered, "Yes." This is Johnson speaking. Mr. Burke asked, "What part did you play in that?" and Johnson said, "December 15th at 12th and Bain-

bridge, Aaron Turner and Clarence Lofton came to 12th and Bainbridge and got me. 'Tree-top' said to me"—you are "Treetop"?

A. Yes.

Q. That is your nick-name?

A. Yes.

Q. Why do they call you "Treetop"?

A. That is my nick-name.

Q. Johnson was asked, "Who is 'Treetop' "? and Johnson said, "Aaron Turner."

MR. ROME: I do not think this is proper cross-examination. It has been read in court before.

THE COURT: You may not read the notes of testimony all over again. You may, however, ask him specific questions.

BY MR. McCLAIN:

Q. Did you, as Johnson said at the hearing before the magistrate, agree with Johnson or "Eats", and Clarence Lofton, to go up to get some money from the Ace Broom Company?

A. He asked me ——

Q. Did you agree to go up with Johnson and Lofton to the Ace Broom Company?

A. No, sir, I did not.

Q. Did you go together that day?

A. No, sir.

Q. You were together at some time some place?

A. No, sir; never been in my life.

Q. You have never been out with them?

A. No, sir.

Q. After hearing Johnson tell the magistrate everything that you and he and Lofton did that day, then Assistant Attorney Burke turned to you, did he not,—you were sworn—you said you were sworn before the magistrate ——

MR. ROME: He has answered the question.

THE COURT: Ask the question.

BY MR. McCLAIN:

Q. Did this happen: "By Mr. Burke: Do you want to say anything to His Honor?" and you answered, "No, sir." "Can you add anything?" and you answered, "No, sir"?

MR. ROME: Objected to.

THE COURT: It has been read. Ask questions.

BY MR. McCLAIN:

Q. Did you corroborate everything Johnson said? Did you not, under oath, say everything that Johnson had said was right?

A. Yes.

Q. Under oath, you told the Magistrate that every-

thing Johnson and Lofton had said was true, didn't you?

A. What Johnson said. Lofton didn't say anything.

Q. You said everything Johnson said was true, didn't you?

MR. ROME: He has answered.

THE COURT: Yes, he has answered that.

BY MR. McCLAIN:

Q. Did you tell the magistrate that you got $175 out of the robbery?

A. No, sir.

Q. Didn't you tell the magistrate that?

A. No, sir.

Q. Did not the magistrate ask you how much you got, and you said, "I would say $175"?

A. No, sir.

Q. You did not say that?

A. No, sir.

Q. Then you were asked, "Was that in addition to the $50 that one got and the $175 the other got?"—didn't they ask you that?

A. No, sir.

Q. You said that was your share—that you got $175?

A. No, sir.

Q. You mean to say that never occurred before the magistrate?

A. It did not, sir.

Q. Notwithstanding that, after all those things were said about you, you went back and signed this paper; is that correct?

MR. ROME: He has answered that.

THE COURT: Go ahead; ask your question.

MR. ROME: I ask for an exception.

THE COURT: To what?

MR. ROME: I am objecting to this line of examination.

THE COURT: He said he went back and signed the paper.

(Exception to defendant.)

BY MR. McCLAIN:

Q. When did you sign it?

A. Between the 10th and the 12th.

Q. Do you remember being taken to the Ace Broom Company on the 10th?

A. On Monday.

Q. There were some civilians there—some people that were not of the police?

A. Yes.

Q. Mrs. Simmons, the wife of the dead man, was there?

A. I don't know; there was some one there.

Q. You did not say anything to them about being beaten, did you?

A. No, sir.

Q. You saw and heard Johnson and Lofton tell what had happened, did you not?

A. I saw Johnson.

Q. You said in the statement you signed that on the Thursday before the 15th you went out looking around the Ace Broom factory and thought it was a good place to rob; that is right, is it not?

A. No, sir.

Q. That is not true there?

A. No, sir.

Q. As a matter of fact, is not the real truth of this thing that you, knowing Johnson and knowing Lofton, met at 12th and Bainbridge Streets on this day, after you had cased the place—you know what that means—"cased" the place?

A. No.

Q. You know what "frisk" meant?

A. Yes.

Q. But you do not know what "casing the place" means?

A. No, sir.

Q. After you had "cased the joint"—looked it over—you met "Fats" and Lofton, and it was you who

took them up there; you went into the Ace Broom Company about five o'clock on December 15th, 1945, beat the brains out of the two men, and robbed them?

A. No, sir.

Q. Didn't you do that?

A. No, sir; I have never in my life been there.

BY THE COURT:

Q. You witnessed the alleged confessions of Lofton and Johnson, did you not?

A. Yes.

Q. When?

A. Judge, Your Honor, I don't quite understand you.

Q. When did you do it—when did you sign as a witness the statements made by Lofton and Johnson?

A. On the 12th—the same day I went to the County Prison.

Q. Did you witness their confessions on the same day that you signed them?

A. You mean did I sign them at the same time?

Q. The same day.

A. Yes.

Q. The same day that you signed all three papers?

A. Yes.

Q. At the same time?

A. Yes.

Q. After you had been to the magistrate's court,

the same day you went to the County Prison; is that right?

A. No, sir; I went to the County Prison on the 12th, and I went to the magistrate's hearing on Saturday morning.

Q. So you were all through with the magistrate's hearing ——

A. Yes.

Q. —when you signed these papers?

A. Yes.

Q. Then these papers, you say the things did not even occur? Each man told the same story, did you not,—you included?

A. I guess so; yes.

Q. Were you asked questions by the police?

A. Yes.

Q. And you gave answers?

A. Yes.

Q. And the answers you gave are set forth in your own language there, are they not?

A. Not all of it.

Q. Is there anything here that does not belong?

A. Yes.

Q. What?

A. About the money.

Q. Everything else but that about the money?

A. No.

Q. Everything else but the money?

A. There is a lot does not go in there.

Q. Tell me anything here that does not belong.

A. I never said I had a sash weight, and I never said I went to Callowhill Street.

BY MR. McCLAIN:

Q. You did not say that you went in with "Fats" back of you?

A. No, sir.

Q. You did not say you had a sash weight?

A. No, sir.

Q. You did not say you would bust the man over the head?

A. No, sir, I didn't.

Q. In other words, the Police Department put all this in about hitting the man over the head with the sash weight, fracturing their skulls, without your saying it?

A. I did not say it.

Q. They put those things in the confession and you did not say them?

A. I didn't say so.

Q. You did not say how the money was divided?

A. No.

Q. Or how many times you hit the men?

A. No.

Q. Or who went through their pockets?

A. No, sir, I didn't say that.

Q. All this was put in by the police?

A. Yes.

Q. Not by you?

A. Not by me.

Q. Yet you signed every page of it?
A. Yes, I signed it.

MAZY EVA BROWN, being duly sworn, was examined and testified as follows:

BY MR. ROME:

Q. What is your full name?
A. Mazy Eva Brown.
Q. Where do you live?
A. 2246 Wilder Street, Philadelphia.
Q. What is your relationship to Aaron Turner?
A. Aaron is—Aaron was my intended husband at one time.

BY THE COURT:

Q. What do you mean by that?
A. As long as he was on the street, he was my intended husband.

BY MR. ROME:

Q. Do you recall seeing him on June 3rd, 1946?
A. Yes; I stopped at his house Monday, June 3rd, about five-thirty to six o'clock in the morning.
Q. Where do you work?

A. At the Earle Theatre, 11th and Market Streets.

Q. What are the hours of your work?

A. Then, they were from twelve o'clock midnight until I got my work done, but now I stay until six.

Q. On June 3rd you worked from twelve o'clock until what time?

A. Until I got my work done.

BY THE COURT:

Q. From midnight until when, this particular night?

A. From midnight until six a. m.

BY MR. ROME:

Q. You stopped by Aaron's place the morning of June 3rd, on your way home from work?

A. Yes.

Q. Did you see him at the time?

A. Yes, I did.

Q. Did you see any unusual marks on his body or head?

A. No, no marks when I saw him. Monday morning, June 3rd.

Q. Did you go to Aaron's house at 720 Mervine Street later that day?

A. I stayed with Aaron until about ten o'clock, and walked to the trolley line to go home.

Q. Did you try later that day to see him?

A. That evening.

Q. You went to the house that evening?

A. Yes.

Q. He was not there?

A. He was not there.

Q. You learned that he had been arrested?

A. I learned that he had been arrested before I got to Aaron's house. When I got there, Aaron's room was torn up.

Q. What did you do after you found he was not at the house?

A. First, I went to the police station at 12th and Pine.

Q. What did they tell you there?

BY THE COURT:

Q. Who did you speak to?

A. I imagine the sergeant.

BY MR. ROME:

Q. What did they say?

A. I asked, "Do you have Aaron Turner?" They looked on the book and said, "No, we haven't got him here."

Q. What did you do next?

MR. McCLAIN: Objected to as immaterial.

BY THE COURT:

Q. How did you know that he was arrested?

A. This man at 519 South 12th Street saw him arrested. He said, "Aaron got locked up."

Q. You knew from information you had,—or thought you had—that he had been arrested?

A. Yes.

BY MR. ROME:

Q. When did you next see Aaron Turner?

A. Monday, June 17th, at the County Prison, at 10th and Reed Streets.

Q. Did you hear anything from him during that period from June 3rd to June 17th?

A. The first, was a letter from him on June 13th.

Q. Where did he say he was?

A. He said he was at 10th and Reed Streets, at Moyamensing Prison.

Q. You went to see him there?

A. I went on June 17th, which was the first I saw him since June 3rd.

Q. What was Aaron's condition at the time?

A. His bottom lip was swollen.

Q. What other marks were there?

A. He showed me his leg through the screen. You cannot see much, but what I could see was new wounds.

BY THE COURT:

Q. You cannot see at all through the screen, can you?

A. Unless he stands back, I couldn't see only the wall.

BY MR. ROME:

Q. Anything else?
A. There was a knot on his hand.
Q. He did not have that before?
A. He didn't have it Monday, June 3rd, when I saw him at his house that morning.

CROSS-EXAMINATION.

BY MR. McCLAIN:

Q. You know there is a board up to the waist?
A. Yes.
Q. You cannot see below the waist?
A. As plain as I could see, it was new wounds.

BY THE COURT:

Q. You had to step back fifteen feet to see?
A. Yes. Then I was up to him at the gate when he came out of the visiting room. I can kiss Aaron through the screen.
Q. That was the 17th of June?
A. Yes.
Q. He was arrested the 3rd of June?
A. Yes.
Q. You did not get a lawyer for him?

A. He was financially embarrassed.

Q. You did not go to a lawyer?

A. I went to Lawyer Lemisch.

Q. What did he say?

A. He wanted $1000—$500 down and $500 at the time of the trial—at the time the trial begins. It was at 17th and Chestnut Streets, but he has moved now.

Q. You knew of the Public Defender and the Legal Aid, did you not?

A. I have a card from the Legal Aid.

Q. You went to the Legal Aid?

A. Yes.

Q. When did you go there?

A. There is a date on the card.

Q. Did you go there?

A. Yes.

Q. Who did you see?

A. Where?

Q. At the Legal Aid.

A. There was a lady at the desk. She told me there was a fifty-cent fee, and I went back, and the lawyer said, "We don't handle murder cases."

Q. What did he say?

A. He told me to go to the N.A.A.C.P.

Q. Did not anyone tell you to go see the Public Defender?

A. The Public Defender?

Q. Yes.

A. Where is that?

Q. That is where they go when criminals have no money to pay a lawyer.

A. No; the only place I went was the Legal Aid, and the N.A.A.C.P., and Lawyer Lemisch.

MR. ROME: The N.A.A.C.P. is the National Association for the Advancement of Colored People.

DEFENDANT RESTS.

COMMONWEALTH'S REBUTTAL TESTIMONY.

DET. DANIEL O'MAHONEY, No. 21, recalled for further examination.

BY MR. McCLAIN:

Q. In all the times that you questioned the defendant, Aaron Turner, was there any violence used by you or by anybody in your presence against him?

A. No, sir.

Q. Did he or did he not have the injury to his hand prior to his arrest, or at the time you arrested him?

A. He did not say anything to me about his hand, but he did, in my presence, tell Detective Thompson.

Q. That he had a hand injury?

A. No, not that he had a hand injury, but that he had a fight and the knee of his trousers was torn. He and Thompson discussed it in my presence. I heard about his trousers being torn, but nothing about his hand.

BY THE COURT:

Q. He has testified that the interviews started the afternoon of June 3rd, when he was arrested, up to and including the time he was taken to the magistrate, and probably some time thereafter; that he was beaten by detectives Thompson, yourself, Fisher, Lennon and Cary; that you, or some of these men, in your presence, struck and beat him with their fists, with a stick, with a rubber hose, and with a blackjack, inflicting wounds so bad on the person of the defendant that he had blood on his shoes which Detective Fisher had to wash off: did you see anything like that? I want to know from you what occurred while the prisoner was under your control.

A. Your Honor, I saw nothing like that.

Q. Did you strike him with anything?

A. I did not strike him.

Q. With your fist, a stick, a rubber hose, a blackjack, or anything like that?

A. No, sir.

Q. Did you see any injuries in the nature of abrasions, lacerations, or bruises on the body of the man while he was in your custody?

A. Yes.

Q. Where?

A. On the leg—on one leg.

Q. What was it?

A. He had a festered sore. He told me it was an old sore.

Q. Did you see anyone strike him?

A. No, I did not.

Q. Did he tell you that anyone had struck him—any policeman or detective?

A. No, he did not.

BY MR. McCLAIN:

Q. At, or before, or after the signing of these papers, did you strike, or see anyone else in your presence, or in the presence of the defendants Lofton or Johnson, strike this defendant?

A. I did not strike him, and I did not see anyone else strike him.

Q. Did you see anyone strike this man, or did you?

A. I did not, and I did not see anyone else.

Q. In order to make him sign the papers, as he said?

A. No, sir.

(No cross-examination.)

DET. NATHANIEL R. THOMPSON, No. 184, recalled.

BY MR. McCLAIN:

Q. Did you at any time during the course of your investigation, at the time of the arrest of this defendant or thereafter, strike or ill-use this man?

A. I did not.

Q. Did anyone, in your presence, strike or ill-use him?

A. No, sir.

Q. Did you strike or ill-use Jasper Johnson, alias "Fats," alias "Playboy," or Clarence Lofton, for the purpose of making them sign any paper?

A. No, sir.

Q. Did you notice any injury, or was there brought to your attention by the defendant any injury upon his body, at the time of his arrest?

A. O'Mahoney and I picked up the defendant and brought him in to the City Hall. He was concerned with why he was picked up. We led him to believe it was for something else until we got him in. After we got him in, I talked to him—examined him.

Q. Did he have any injury?

A. He said something about a fight—that he had a fight, and he had an injury from that, but I could not say which leg. But he did have a festered sore on his leg. I said, "Don't you think we should get

something for it and attend to it?" and he said he would be all right.

Q. Did he or did he not have an injury or lump on the hand at the time you arrested him?

A. Yes, he did.

BY THE COURT:

Q. You are one of those who is supposed to have punched him in the face, hit him in the leg, knocked him around. He stated you said his guts would be hanging out before you got through with him: did anything like that happen?

A. No, sir.

Q. Did you see O'Mahoney hit him?

A. No, sir.

Q. Or did you see anybody hit him?

A. No, sir.

(No cross-examination.)

DET. SGT. SAMUEL RICCARDI, recalled.

BY MR. McCLAIN:

Q. Sergeant Riccardi, in the course of your investigation of the Ace Broom Company murders, did you, or did you see anyone in your presence, inflict

any physical injuries or violence upon this defendant, Aaron Turner?

A. No, sir, I did not. I would not permit such a thing.

Q. Did you yourself, or did you see any other police officer, inflict any violence upon Jasper Johnson, alias "Fats," alias "Playboy," or Clarence Lofton?

A. No, sir.

Q. Did you notice any injuries on the defendant right after his arrest?

A. I noticed the lump he has on his left wrist while he was demonstrating to the police during this time how he could change the dice—how he could throw the right number out by changing the dice in his hand, due to his long fingers. That is how I noticed the mark.

Q. Was it a new or an old mark?

A. It was an old mark. He had it when he went in there.

(No cross-examination.)

DET. WESLEY FISHER, No. 41, recalled.

BY MR. McCLAIN:

Q. Detective Fisher, in the course of your investigation of the Ace Broom Company murders, did you

yourself, or did you see anyone in your presence inflict, or attempt to inflict, any violence upon the defendant, Aaron Turner?

A. No, sir.

Q. Did you yourself, or did anyone in your presence, inflict or attempt to inflict violence upon Jasper Johnson, alias "Fats," alias "Playboy," or Clarence Lofton, the other two men involved?

A. No, sir.

Q. Did you or did you not bring fruit to the defendant?

A. I brought food from my own home, on my day off, on Sunday, to this defendant and the other defendants.

BY THE COURT:

Q. Did you do it voluntarily or were you paid for it?

A. I did it voluntarily.

BY MR. McCLAIN:

Q. Did you see any signs of injury on the defendant at the time of his arrest?

A. His hand—his left hand—had a bump on it. I later spoke to him and asked him with reference to his suit of clothes, which was torn, and had blood spots on it—how he came to get it that way—and he said a couple of unknown colored people set on him and beat him a few days before he was arrested.

BY THE COURT:

Q. Where did you get that suit of clothes?
A. From his room on South Mervine Street.

BY MR. McCLAIN:

Q. Did he complain to you that he had got blood on his shoes because he was beaten after his arrest, and you told him that you would wash it off?
A. No, sir.

(No cross-examination.)

DET. JOHN A. CARY, No. 4024, recalled.

BY MR. McCLAIN:

Q. Detective Cary, did you, or did anyone in your presence, inflict or attempt to inflict any violence upon this defendant, Aaron Turner, after his arrest on June 3rd, 1946?
A. No, sir.
Q. Did you, or did anyone in your presence, inflict or attempt to inflict violence upon Jasper Johnson, alias "Fats," alias "Playboy," or upon Clarence Lofton, in order to make them sign the statements which have been read here?
A. No, sir.

BY THE COURT:

Q. It was testified here that on June 7th, in the cell room in City Hall, you came in the cell with a stick, and Detective O'Mahoney said, "I do not like to see a black man beat a black man;" that you stepped out, and Detective O'Mahoney beat him across the body: did you see anything like that?

A. Positively, no, sir.

BY MR. McCLAIN:

Q. Do you know whether or not at the time of the arrest, when you first saw the defendant, he had an injury to his hand?

A. I did not see any injury.

(No cross-examination.)

LT. JAMES A. KELLY, recalled.

BY MR. McCLAIN:

Q. Lieutenant Kelly, did you, or did anyone in your presence, inflict or attempt to inflict any violence upon this defendant, Aaron Turner, or upon Jasper Johnson, alias "Fats," alias "Playboy," or on Clarence Lofton, for the purpose of having them sign these statements?

A. No, sir, I did not inflict any punishment, nor did anyone else, in my presence.

Q. It has been testified that this defendant, Aaron Turner, and Clarence Lofton were taken to the 15th and Snyder Avenue Police Station.

A. They were.

Q. Why was that done?

MR. ROME: Objected to.

THE COURT: The defendant has made a point of it, and it seems to me an explanation should be made.

MR. ROME: Very well.

BY MR. McCLAIN:

Q. His Honor says that you can tell why it was done.

A. I walked in the cell room on the sixth floor of City Hall just as this defendant here was calling across the top of the cells to Jasper Johnson to stand tight and not to talk; that it was one against two, so they could not prove anything. He was sent to 15th and Snyder Avenue as a result of what I heard at that time. He was brought back to City Hall after he had promised not to try to influence other prisoners.

Q. At the time of his arrest, when he was brought in to the Homicide Division of the Police Depart-

ment, did you notice whether or not he had an injury on the hand?

A. There is no noticeable injury, but there is a growth or lump of some sort, and he made an explanation to me where it did come from.

Q. What did he tell you about it?

A. That on an occasion, with two other men, they made some sort of arrangement in a house with a girl involved, and as the result of what happened this girl was supposed to signal when she was ready, and as the result a fight resulted over it, and he was injured by a blackjack at the time.

Q. This was before the arrest on June 3rd?

A. Some time before—I think he said six months before.

BY THE COURT:

Q. The defendant stated that before the magistrate's hearing on June 7th—on the night before the magistrate's hearing—that Detective O'Mahoney called him out in front of you, and you said, "I don't like you; you are stubborn. I have no use for niggers, and if I had my way I would throw you down the elevator shaft," and you said, "The boys have opened up on you." and O'Mahoney beat him up: did anything like that happen?

A. No. On the 7th, they were eating pie and ice cream. It was then that this fellow was showing how well he could handle dice.

Q. The day before the alleged confession?

A. That is right. That night, we could not get the stenographer.

Q. Were the confessions signed on the 8th, the 10th, or the 12th?

A. The confessions were signed on the 8th. On the 9th—Sunday—the statements were completed and signed. On the 9th, no one worked outside of Wesley Fisher. He asked was it all right to visit the prisoners, and I said it was. He said he had some food he wanted to take to them.

On the 10th, arrangements were made to go to the Ace broom factory to re-enact the crime at the scene. Immediately after that, from the 10th on, I did not see the prisoner. He was sent up to be delivered to the County Prison.

(No cross-examination.)

MAGISTRATE EDWARD WILLIAMS, being duly sworn, was examined and testified as follows:

BY MR. McCLAIN:

Q. You are Magistrate Edward Williams, a duly elected magistrate of the City and County of Philadelphia?

A. That is right.

Q. On June 8th, 1946, Judge Williams, were you presiding in the Central Police Court here in the City Hall?

A. Yes.

Q. At that time, were the three defendants, one Aaron Turner, one Jasper Johnson, alias "Fats," alias "Playboy," and one Clarence Lofton, brought before you?

A. That is right.

MR. McCLAIN: Bring out Jasper Johnson, and bring Clarence Lofton down at the same time.

BY MR. McCLAIN:

Q. Judge Williams, you have a recollection of what occurred at the hearing before you on that day; is that correct?

A. Yes.

Q. Who was the assistant district attorney in your court?

A. I think it was Mr. Burke.

Q. Will you tell His Honor and the ladies and gentlemen of the jury first, whether or not this defendant was sworn before you?

A. I am pretty nearly sure he was.

Q. Did he say to you that he had been mistreated in any way by the police?

A. No, sir.

Q. What is your recollection of what Jasper John-

son said about the Ace broom factory murders at 355 North 2nd Street?

A. Is that the man gave the testimony?

Q. That is right.

A. From my recollection, he said this man here (indicating), and the other two, had met in a beer garden in South Street—Bainbridge Street—and they went up to do a "job". I think those are the words he used. The two went inside the factory and the other stood outside as a watch. One of the men took a sash weight and hit the first man they came in contact with.

Q. What man had the sash weight?

A. I am pretty sure it was the other man.

Q. Johnson said that Turner hit him?

A. I am not quite sure which one.

Q. After this man had given his story of what happened, what do you remember the defendant as saying?

THE COURT: He doesn't remember what he said.

THE WITNESS: I don't remember everything.

BY THE COURT:

Q. Can you identify this man as one of the men?

A. Yes.

BY MR. McCLAIN:

Q. Is this Jasper Johnson, one of the defendants (indicating)?

A. That is right.

Q. Is the other man (indicating) Clarence Lofton?

A. Yes.

Q. Johnson is the man who detailed what happened?

A. Yes; the smaller man here.

CROSS-EXAMINATION.

BY MR. ROME:

Q. Which one of the defendants can you identify there—the first man?

A. This man here (indicating).

Q. What is his name?

A. I don't know whether Johnson, Turner, or what.

Q. Do you know what the name of the other man is?

A. No.

Q. Do you know what the name of this man is (indicating)?

A. No.

THE COURT: Is there any doubt about the man who was brought up being Johnson?

MR. ROME: No.

BY MR. ROME:

Q. You do not know the name of the second man?
A. No.
Q. Or the name of the defendant?
A. No.
Q. Do you know whether they were there or not?
A. Yes, they were there.
Q. Do you recall the district attorney putting this question to the defendant: "Do you want to say anything to His Honor?"
A. I cannot remember that far back. I want to be fair. But if it is on the sheet, it probably was asked.
Q. Do you recall this defendant answering the question as being "No, sir"?
A. I do not recall that.
Q. You do not recall?
A. No.
Q. In other words, you are not at all sure about anything of the testimony?

THE COURT: In all fairness, if you ask me a week from now do I remember accurately what someone answered to a certain question, I wouldn't remember; and neither would you.

MR. ROME: All right.

CHARLES M. GIBB, being duly sworn, was examined and testified as follows:

BY MR. McCLAIN:

Q. What is your name?
A. Charles M. Gibb.
Q. Where do you live?
A. 7312 North 20th Street.
Q. What is your official position?
A. Prison agent, Philadelphia County Prison.
Q. Philadelphia County Prison at 10th and Reed Streets?
A. That is right.
Q. Known as Moyamensing Prison?
A. That is right.
Q. In the course of your official duties, do you keep records of the prisoners at the institution?
A. We keep a complete medical record of every commitment.
Q. Have you, at my request, produced the official medical record of the defendant, Aaron Turner, from the time he was committed to Moyamensing Prison?
A. Do you want me to read this?
Q. Is this the official record (indicating)?
A. This is from the records.
Q. At the County Prison do you have sick call?
A. Daily.
Q. At what time of the day or night?
A. There is someone available for duty twenty-

four hours daily, but there is sick call every morning.

Q. Is that sick call available to all prisoners?

A. Every one.

Q. When a prisoner calls for the assistance of a doctor, is there a record made of it?

A. Oh, yes.

Q. Do you have with you the record of this prisoner?

A. I do.

Q. Will you state whether or not he had any medical treatment for injuries, after his admission to the prison?

A. There is quite a lengthy record here.

Q. When was he admitted?

A. Sixth month, twelfth, 1946.

Q. Did he that day ask for assistance of a physician?

A. He was that day examined as a routine matter, but he made no complaint.

Q. Mr. Gibb, were there any signs of physical injury on the defendant at the time he was committed to the prison?

A. At the routine examination on the day he was admitted, the defendant denies any present injuries.

Q. When did he next have any institutional record—what is the next date?

A. On the 15th, myalgia of the back, constipation.

Q. That was the 15th of June?

A. The same month, yes. And on the 18th a routine urinalysis was taken. On the 21st of June, he

complains of soreness of the gums; and on the 1st of July he complained of pain in the back and states he was beaten by the police. No visible marks of injury were seen. Ointment was applied.

Q. That was the 1st of July?

A. Yes.

Q. Nineteen days after his admission to the prison was the first complaint; is that correct?

A. Yes.

Q. His examination showed no visible signs of injury?

A. No.

BY THE COURT:

Q. What is "myalgia of the back" which you referred to on the 15th of June which caused you to make a urinalysis—what does that mean? Do you know?

A. No, I do not. The urinalysis was three days later; they are not on the same day—they are not connected.

Q. What was the Wasserman?

A. Positive.

CROSS-EXAMINATION.

BY MR. ROME:

Q. On the entry the 15th of June, it does state the defendant was given a salve when he complained of myalgia?

A. Yes.

Q. It does state that he was given salve?

A. That is right; myalgia of the back, and salve ointment was applied.

BY THE COURT:

Q. You did not say that; yet you say on the 12th, when he came in, there were no visible signs of injury. He denied any injuries?

A. That is right.

Q. Three days later, he complained of myalgia of the back?

A. That is right—myalgia.

Q. Whose writing is it?

A. The doctor's.

BY MR. ROME:

Q. There is another entry the 1st of July, when he stated he was beaten by the police?

A. I am not familiar with it.

MR. ROME (examining card): I beg your pardon; I am mistaken. There is no other such notation.

RECESS.

AFTERNOON SESSION.

DET. THOMAS LENNON, No. 223, recalled.

BY MR. McCLAIN:

Q. Did you or anyone in your presence, inflict or attempt to inflict any violence upon this defendant, Aaron Turner?

A. No, sir.

Q. After his arrest on June 3rd, 1946?

A. No, they did not.

Q. Did you or did anyone else in your presence, inflict or attempt to inflict any violence on Jasper Johnson or Clarence Lofton?

A. No, sir.

Q. Did you at any time use a blackjack on Aaron Turner, as he testified?

A. No, sir.

Q. Did you attempt to wash, or have his shoes

washed for him, to remove any blood alleged to have been on them?

A. No, sir.

(No cross-examination.)

INSPECTOR GEORGE F. RICHARDSON, being duly sworn, was examined and testified as follows:

BY MR. McCLAIN:

Q. What is your name?

A. George F. Richardson.

Q. Under your jurisdiction comes the Homicide Squad of the Philadelphia police; is that correct?

A. That is right.

Q. Inspector Richardson, did you, after the arrest of Aaron Turner, Jasper Johnson and Clarence Lofton, interview those?

A. I did.

Q. How many times, inspector?

A. In the course of four or five days, I talked to them maybe three, four or five hours.

Q. Inspector, did this defendant, Aaron Turner, or Jasper Johnson, or Clarence Lofton, at any time complain to you that they had been mistreated?

A. They did not.

Q. Did you or anyone in your presence, inflict or attempt to inflict any violence upon Aaron Turner, Jasper Johnson or Clarence Lofton?

A. No, sir.

Q. In your talks with the three men, Aaron Turner, Jasper Johnson and Clarence Lofton, which man told you first how the crime was committed?

A. Clarence Lofton.

Q. Which man told you second?

A. Mr. Turner.

Q. What were the circumstances under which Jasper Johnson, alias "Fats," alias "Playboy," told you of his participation in the crime?

A. Mr. Turner and Clarence Lofton asked permission to talk to "Fats" on several occasions to fill in some of the things they had forgot, and they would tell us how far they were getting along with "Fats" —how he was coming along. This defendant here and Clarence Lofton ——

Q. Clarence Lofton and Aaron Turner?

A. Yes. Clarence Lofton and Aaron Turner did most of the talking to "Fats" to have "Fats" tell the truth.

Q. Did "Fats" ultimately come to you and tell the story?

A. That is right, in company with Clarence Lofton and Aaron Turner.

CROSS-EXAMINATION.

BY MR. ROMÉ:

Q. Were you present at the time the confessions were signed?

A. Not when they were signed, no, but when the three boys made the admission.

Q. Can you give the approximate date of that event?

A. Yes; on Friday afternoon; I would say around three or four o'clock on Friday afternoon, we went to them. Mr. Turner and Clarence Lofton had told "Fats"—told us that "Fats" was ready to make a clean breast of everything.

Q. In other words, this defendant was assisting the police in getting the confession from the other men?

A. That is right.

Q. You have stated that you spoke to this defendant, and, if I understood you correctly, the other men also, three, four or five hours from the time of their being picked up?

A. That is right.

Q. I do not take it that you mean four or five hours at a time?

A. No, right off the desk—the desk sergeant, and in the cell room—wherever I could see them.

Q. How long would you be present?

A. I would stay sometimes an hour, sometimes

two hours, according to how much time I had to stay with them.

Q. Did you ever tell the defendant he had a right to a lawyer?

A. No. I don't know whether he was represented or not.

Q. How many times, would you say, over the period from June 3rd until June 8th, were you present when the defendant was being questioned?

A. Well, I would go up in the morning, and I would go up in the afternoon, whenever I had time —three or four times a day I would go up, and at night.

Q. Each day?

A. That is right.

Q. Do you know when the defendant was taken to Moyamensing Prison?

A. Why, I think a day or two after he had his hearing—maybe three or four days after he had his hearing.

BY MR. McCLAIN:

Q. Inspector Richardson, under the police regulations, have you or have you not the right to suggest a lawyer to any defendant anywhere, at any time?

A. We do not.

Q. It is forbidden, or it is not?

A. It is forbidden—it is against the rules.

BY MR. ROME:

Q. If a man has a Constitutional right to a lawyer, you would not let the regulations forbidding it interfere with you?

MR. McCLAIN: Objected to.

BY THE COURT:

Q. Did the defendant ask you to get a lawyer for him?

A. No, sir, he did not.

CAP. JOSEPH T. KERNS, being duly sworn, was examined and testified as follows:

BY MR. McCLAIN:

Q. You are Captain Joseph T. Kerns?

A. That is right.

Q. You are a captain of police of the City of Philadelphia?

A. Captain of detectives.

Q. After the arrest of Aaron Turner on June 3rd, 1946, and the arrest of the other two men, Johnson and Lofton, did you see them from time to time, and talk to them?

A. Yes.

Q. Did you question them?

A. I did not question them. I saw them from time to time—maybe said, "How are you doing?"—something like that.

Q. Did this defendant, or either or both of the other two men, complain to you that they had been mistreated at any time?

A. No, sir.

Q. Did you or did anyone in your presence, inflict or attempt to inflict violence upon this defendant or upon Jasper Johnson or Clarence Lofton?

(No cross-examination.)

COMMONWEALTH RESTS IN REBUTTAL.

TESTIMONY CLOSED.

(Mr. McClain argues to the jury for the Commonwealth.)

(Mr. Rome argues to the jury for the defendant.)

(Mr. McClain argues to the jury for the Commonwealth.)

CHARGE OF THE COURT.

HON. FRANK SMITH, P.J.

Members of the Jury: In this case, Aaron Turner, the defendant, alias "Treetop," stands before you, charged in bill number 646 of June Sessions, 1946, with the murder of Frank Endres. This alleged murder took place on Saturday, December 15th, 1945, at five p. m., at which time the head of Frank Endres —the skull—was crushed with a dull instrument, and as a result of the injuries then and there sustained, he died two days later.

The defendant, Aaron Turner, has pleaded not guilty to this bill of indictment, so the burden is, therefore, on the Commonwealth of Pennsylvania, as represented by the district attorney, of proving the guilt of the defendant under this bill of indictment.

This defendant, like all defendants who appear before the bar of the Criminal Court, carries with him the presumption of innocence, and there is the burden on the Commonwealth to prove the guilt of the defendant of the charges set forth in the bill of indictment beyond a reasonable doubt.

Members of the jury, reference has been made to reasonable doubt. It is my purpose to give you, as I go along, definitions, as I understand them, of the law. A reasonable doubt is not just any doubt at all; it is not a fanciful doubt; it is not a doubt that

you may conjure in your own mind for the purpose of escaping an unpleasant duty, but it is an honest doubt, a substantial doubt arising from the evidence; a doubt of such a nature that if it arose in the more important affairs of your life would make you stop —make you hesitate before you could reach a conclusion. That, members of the jury, is a good definition of reasonable doubt which you may apply to the facts as you find them to be.

You are the sole judges of the facts. That is your primary duty—to weigh the facts; and, as counsel has said, it is not what my recollection may be, or the district attorney's recollection, or that of counsel for the defendant. If our recollection is not in accord with yours, you must dismiss ours and use your own.

Members of the jury, we start off first with the realization that the burden is on the Commonwealth to prove the guilt of the defendant beyond a reasonable doubt, and if the Commonwealth has failed to meet its burden of proof, the defendant must be acquitted. Furthermore, it is well to say at this time, as I go along, if you come to the unanimous conclusion—because your verdict must be unanimous—that the Commonwealth has proven beyond a reasonable doubt that this defendant is guilty of the charge set forth in this bill of indictment under which he is now being tried, you will then find the degree of guilt of the defendant.

There are a number of definitions of various kinds of murder, and this particular charge comes under

one particular portion of the statute, and I think it is well for the jury to know generally what murder is, and what homicide is, under the law.

In common law there are two degrees of felonious homicide—murder and manslaughter. Murder, at common law, is where a person of sound mind, memory and discretion, unlawfully kills any reasonable creature in being, under the peace of the Commonwealth, with malice aforethought, express or implied. That definition has come down with time, and is still a good definition.

Manslaughter is any unlawful killing of another without malice aforethought, express or implied, as when one strikes a person and death results from the blow, although death was not intended; or in a fight arising from a sudden quarrel, or by mutual agreement, or in the heat of passion upon great provocation. It is distinguished from murder by the lack or absence of malice.

The law of Pennsylvania with respect to the crime of murder—all murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration of, or attempt to perpetrate any arson, rape, robbery or burglary, shall be murder in the first degree. All other kinds of murder shall be murder in the second degree. Where there is the purpose and intention to kill in the mind of one—to take the life of another—it is wilful. If he is entirely conscious of such purpose and design, it is deliberate. If he has

had sufficient time to fully form the design, it is premeditated.

In the kind of murder in the first degree described as wilful, deliberate and premeditated, there must be the fully formed purpose to kill, with so much time for deliberation and premeditation as to convince the jury that this purpose is not the immediate offspring of rashness and impetuous temper, and that the mind has become fully conscious of its own design.

One who uses a deadly weapon upon another at some vital part, with manifest intention to use it upon him, must, in the absence of qualifying facts, be presumed to know that his act is intended to kill, and must be presumed to intend death. A man who uses a deadly weapon without sufficient cause or provocation, must be presumed to do it wickedly, or from a bad heart. One who takes the life of another with a deadly weapon, and with a manifest design to use it upon him, with sufficient time to deliberate and fully to form the conscious purpose of killing, and without sufficient reason or cause, is guilty of murder in the first degree.

Murder of the second degree is where there is an unlawful killing, the outcome of a wicked and depraved heart, but where no purpose to kill has been shown by the evidence, and such purpose cannot be reasonably inferred from the circumstances.

The difference between murder and manslaughter is this: manslaughter is never accompanied by legal malice or depravity of heart, that condition or frame

of mind exhibiting wickedness of disposition, recklessness of consequences, or cruelty.

To make killing manslaughter, it is necessary that the circumstances should indicate there was not cruel depravity of heart, or wanton cruelty.

Malice exists in both degrees of murder—first and second—and the distinction between them is that in murder of the first degree there is the design to kill, where in murder of the second degree there is no design to kill but to do bodily harm.

Malice is a term including not merely ill-will but every case where there is manifest wickedness of disposition and disregard of consequences, such as in the use of a deadly weapon.

Manslaughter is any unlawful killing without malice aforethought, as when one strikes a blow and death results, although not intended, or upon mutual agreement, or in the heat of passion, or upon great provocation.

The Commonwealth of Pennsylvania is asking for a conviction of this defendant of murder of the first degree under that portion of the Criminal Code—"or which shall be committed in the perpetration of, or attempt to perpetrate any arson, rape, robbery or burglary, shall be murder in the first degree."

I shall now define robbery, since the cause of action is based upon a killing in the perpetration of a robbery.

Robbery is the felonious and forcible taking from the person or presence of another money or goods of value by violence or putting him in fear.

In other words, the Commonwealth charges that the killing in this case was done by this defendant in the perpetration of a robbery. So, it must prove to you beyond a reasonable doubt that a robbery in fact was perpetrated; secondly, that it was perpetrated by this defendant; that the defendant in the perpetration of the robbery inflicted injury upon the head of Frank Endres on the 15th of December, 1945, from which injuries the man died.

It is not my intention to give you my detailed recollection of the evidence. You are the sole judges of the facts and you must remember. Your verdict arrived at must be unanimous; there can be no divided verdict.

The Commonwealth has presented considerable evidence, the major portion of which has to do with the alleged confession of the defendant, and the confession of other men alleged to have been involved with him in the commission of the crime.

You will recollect, members of the jury, at the time this man Endres was killed in the broom factory, no one saw who killed him. The murder was not seen by anybody. Nobody was arrested for the crime, so far as we know from the evidence, until some time afterwards.

When it comes to consideration of the statement of the alleged confederates, or accomplices, as they might be called, it is your duty to carefully study the alleged confessions. Study them with care and caution, since these men have already admitted,

themselves, being involved in murder. If you believe the alleged confessions or admissions of the accomplices, you must first find they were freely given, without promise, coercion, or inducement. If you find the confessions to be true, you may convict him upon the confessions; but it is best to have it corroborated by material facts which indicate its truthfulness.

The police have presented the alleged confession of the defendant himself. These confessions are intertwined, and in examining the evidence you have the right to determine how each and every one was reached by the defendant and the two other men, Johnson and Lofton.

The law is quite clear about confessions. The law says that before a confession can be admitted the corpus delicti must have been proved. That means that the killing must be proved, and the surrounding circumstances must indicate that he has been killed unlawfully and feloniously at the hands of another. Then, before the confession may be admitted in evidence, the jury must be satisfied beyond a reasonable doubt that the confession has been a free and voluntary one, not induced by fear, coercion, or promise held out, or inducement held out to the defendant. You must first find that the confession was a voluntary statement made by the defendant of his own free will. That seems to me to be the crux of this case.

For the same reason, if you do not believe this

confession was a free and voluntary one, then you have no right to consider it in the evidence. If you believe beyond a reasonable doubt it is a free and voluntary confession, not induced by fear, coercion or inducement held out, or by threats made, then you may accept the confession in your consideration of all the evidence.

There is another question of law involved, and that has to do with the alleged confession of the so-called confederates. You may remember it is apparent these alleged confessions were made either the 8th of June or later. The police, you may recall, testified they were made the 8th of June, and the defendant has testified they were made two or three days later. Nevertheless, my recollection is—and I do not think there is any doubt about this—that all the confessions were signed by each of the three who made them, and when each made a confession involving the other one, his confession was signed not only by the one making the confession, but was also signed by the others. This defendant not only signed his own alleged confession but also signed the alleged confession of Johnson and the alleged confession of Lofton at the time they were made. The law says a statement made in the presence of a defendant may be put in evidence against him only when his silence under the circumstances means his assent to the correctness of the statement. This man put his name on each of the other two statements, where the other two men, Johnson and Lofton, made their alleged confessions. There is no evidence, that I

know of, that he said, "These things are untrue that these men have said about me," but he did in fact attach his name to the said statements. That is an inference that the statements are true.

Statements generally may be offered in evidence, and that is why I admitted it; but it has no effect as an admission except against the party who makes it, unless it was read to the defendant and he admitted its accuracy and truth. He put his name on each confession, and it is for the jury to determine whether there is from that the inference that those statements made in his presence, to which he put his signature, indicated his approval and correctness of the statements.

You will consider all the evidence in this case, bearing in mind that the burden is on the Commonwealth to prove the guilt of the defendant beyond a reasonable doubt.

The fact that a brutal murder has occurred must not inflame your passions or disturb your emotions. You must be calm and deliberate in your consideration of the evidence. You must consider all the evidence presented by the Commonwealth, and that offered by the defense.

The highlight of the evidence is that this man Endres was found with his skull crushed at five o'clock in the afternoon of December 15th, 1945, at the Ace broom factory, number 355 North 2nd Street, Philadelphia. His head had been crushed by a blunt instrument. Dr. Wadsworth, the Coroner's physician, found that Endres died as the result of a

crushed skull, and as the result of that information brought to the Homicide Squad in the City of Philadelphia—that branch of the Detective Bureau assigned to investigate homicides—evidently the officers started looking around to see who might have been involved in the murder.

Of course, members of the jury, a murder of this kind, where no one was seen going in or coming out of the place, there being no eye-witnesses around where the action occurred, no one can expect to go out and place their hands on the guilty person right away.

There has been mentioned the Statute of Limitations. That does not run against persons guilty of murder, because those making the law realized the difficulty in apprehending anyone committing a murder. But some time thereafter—about six months thereafter—this defendant, as the result of some information received about him, he was apprehended by two City detectives and taken to the City Hall. He was taken, first of all, to the cell room in City Hall, as I recollect. He remained there for some days, and was then taken to the station house at 15th and Snyder Avenue.

There is no doubt that he was interrogated—questioned about things which have been said, to determine if he was involved in this murder. There is nothing wrong about a detective using every proper and reasonable means to ascertain whether a person under arrest was involved in a crime. That is common sense. The law is common sense, and we must

regard these things in a sensible manner. You do not send them to the magistrate before you have sufficient information to hold an alleged culprit for the Grand Jury. There must be prima facia evidence before the police can take them.

Much has been said about the fact that the defendant did not have a lawyer. The Police Department does not suggest a lawyer. If he asks for a lawyer, the Police Department will get him in touch with a lawyer. From the evidence, I understand he could not hire a lawyer. His financee knew he was arrested, and she tried to get him a lawyer, but the lawyer wanted so much money he could not pay him. He has since had a lawyer—these two gentlemen appointed by the Court—to represent him. If he had asked for a lawyer, it was the duty of the police to see that he had the lawyer; but the police testified he never asked for one.

You now come to the crux of the case as to whom you believe. Do you believe the police officers properly interrogated him, or do you believe, in their effort to make him tell the story to them, they beat him with rubber hose, sticks and a blackjack, kicked him around the legs and body, to make him make a confession? You saw the officers here on the stand, and it becomes your problem to determine, using your good sound common sense, as to which story you believe.

If this man, for any reason, made a voluntary statement as to his part in the commission of the crime, that confession may be used by you in con-

sidering whether he is guilty, and to what degree. If you believe his story, that he was beaten, that he was harrassed, that he was clubbed with blackjacks, hose and so forth, then, of course, you and I and every decent citizen would say that such confession, so induced, cannot be used in the trial of the defendant. That is good law and good common sense. If the man had been beaten as he said, then on the 12th of June, when he was taken to the County Prison, which has nothing to do with the Police Department, what would the record there disclosed as to the condition of this man when he arrived at the County Prison?

Much has been made as to why the defendant was taken to another station house. I wondered myself why he was taken to another station house. One of the detectives was recalled to the stand and said that while he was in City Hall he was talking to a confederate—Johnson—and told him to keep quiet, or words to that effect, and they separated them then because they were talking about their defense, and they put them one in one station house and one in another, and kept one in the cell room.

I do not intend to give a review of what the policemen testified. He stated how he was treated by the men, and specifically named them, and they said they did not beat him, neither did they see anyone else beat him, and they did not threaten him or hold out any promises to him, but the confession he made he was willing to make the night before; however, the stenographer was not available at the time,

so the next morning, at nine o'clock, they started the procedure of asking questions and getting answers, which the stenographer then took down in shorthand, later reducing it to typewriting. The statements were then shown to the defendant and to the other two men; they read them, and then signed them, and also signed the alleged confessions of the others.

Now, members of the jury, that seems to me the major portion of the testimony to which you must direct your attention in reaching your determination. You must determine whether the statement made by the defendant is a free, voluntary one, and if the statements made by the other two defendants, Lofton and Johnson, were equally free and voluntary statements, and if the statements they made were true.

I have given you the law, as I recollect it, bearing on the questions involved. The facts are solely for you. You must remember the definitions I have given you of the degrees of murder and of manslaughter, because you have to fix the punishment; if you find the defendant guilty you must fix the degree of the crime. Therefore, if you find the Commonwealth has made out a case—proved to you beyond a reasonable doubt that this defendant is the one who killed Endres on the 15th day of December, 1945, you must, first of all, find him guilty, and fix the degree of guilt. If you find he is not guilty, you merely say "not guilty." If you find him guilty of

murder of the first degree, you will then consider all the evidence—all the circumstances of the crime—and decide what the punishment should be. Under the Criminal Code, if a jury finds a defendant guilty of murder of the first degree, it becomes your solemn duty to inflict the punishment upon the defendant of either life imprisonment or death.

You have listened to the evidence, to the speeches of counsel and the charge of the Court with patience and attention, and I am satisfied that your verdict will be an honest and proper one. The matter is now for you.

I refuse all of the defendant's points except one—number eight.

"If the jury believe that the alleged voluntary confession of the defendant was obtained by oppressive, coercive, illegal and unconstitutional methods, ——"

I have covered that, too, so I refuse them all.

(Exception to defendant to refusal of points for charge.)

MR. ROME: In Your Honor's charge to the jury you say that the defendant's silence may be used as an inference of the correctness of the facts stated. May I say that the Rule requires, too, that that inference applies only where it is only natural for the defendant to speak in his own behalf, sir.

THE COURT: Yes, that is true. Where a statement is made in the presence of a defendant and he

remains silent, it may be a correct inference as to the correctness of the facts stated, only where the surrounding facts and conditions would indicate that such inference should be found.

MR. ROME: I ask for an exception to that portion of Your Honor's charge where you state that the police do not have to rush a defendant to the magistrate before they have a prima facia case. According to the statutes, it is necessary to bring a person arrested before the magistrate ——

THE COURT: That is right,—it does not say when, and they did bring him before the magistrate.

MR. ROME: I think the cases require that it be done forthwith, which would not be to bring him in five days later.

THE COURT: You do not presume to think if they were wrong in delaying the hearing four or five days that it would affect the question of whether he is or is not guilty?

(Exception to defendant.)

MR. ROME: I ask for an exception to that portion of Your Honor's charge where you say the police do not have to recommend a lawyer.

THE COURT: I think I have covered that fairly with you.

(Exception to defendant.)

MR. ROME: Under the cases, a man has the right to counsel in every proceeding against him.

THE COURT: I said that very thing—he has the right to get in touch with a lawyer.

MR. ROME: In a capital case, the Commonwealth has the duty of providing counsel.

THE COURT: They did. I don't know when you were appointed—I have no idea.

MR. ROME: I was appointed after the magistrate's hearing. I submit he should have a lawyer for every phase of the proceeding, which includes the magistrate's hearing.

(Exception to defendant.)

MR. ROME: Will you give me a general exception?

THE COURT: No, I will not give a general exception. If there is a general error in the charge, you do not have to ask for an exception.

JURY OUT.

Verdict
Polling of Jury

(The jury returns a verdict of murder in the first degree; penalty, death.)

MR. ROME: I ask that the jury be polled.

THE COURT: Let the jury be polled.

THE CRIER: Members of the jury, counsel for the defendant has asked that the jury be polled. As your name is called, rise, and in a clear, distinct voice audible to the Court, counsel and the prisoner, announce your verdict.

JUROR NO. 1: How say you?

A. Guilty of murder of the first degree; penalty, death.

JUROR NO. 2: How say you?

A. Guilty of first degree murder; penalty, death.

JUROR NO. 3: How say you?

A. Guilty of murder of the first degree; penalty, death.

JUROR NO. 4: How say you?

A. Guilty of murder of the first degree; penalty, death.

JUROR NO. 5: How say you?

A. Guilty of first degree murder; penalty, death.

JUROR NO. 6: How say you?

A. Guilty of first degree murder; death penalty.

JUROR NO. 7: How say you?

A. Guilty of first degree; penalty, death.

JUROR NO. 8: How say you?

A. Guilty of first degree; death.

JUROR NO. 9: How say you?

A. Guilty; penalty, death.

JUROR NO. 10: How say you?

A. Guilty; penalty death—first degree.

JUROR NO. 11: How say you?

A. Guilty; penalty, death.

JUROR NO. 12: How say you?

A. Guilty of first degree; death.

THE CRIER: The names of the jurors have been called; they have individually announced their verdict. They agree: shall the verdict be recorded?

THE COURT: Let the verdict be recorded. It is recorded guilty of murder of the first degree: penalty, death in the manner prescribed by law.

MR. ROME: Your Honor, I ask leave to file motion for new trial.

THE COURT: You may have four days in which to file motion and reasons for new trial.

(Defendant's points for charge refused and not read, are as follows:)

1. Under all the evidence in this case your verdict must be in favor of the defendant.

2. There is no competent and admissible evidence in favor of the Commonwealth.

3. The only evidence which purports to connect the defendant with the alleged murder of Frank Endres is his alleged voluntary confession which has been offered and read in evidence in this case. The

said alleged voluntary confession discloses on its face that it was taken between the hours of 9 a. m. and noon on June 8, 1946. In the absence of other evidence more specifically designating the time on the said day on which the said alleged confession was made and signed by the defendant, and inasmuch as the evidence in this case discloses that during the said period, before the taking and the signing were completed, the defendant was given a hearing before a magistrate at which time he exercised and declared his desire to exercise his constitutional right to remain silent and not to give evidence against himself, and inasmuch as notwithstanding his said declaration and intent he was unlawfully and unconstitutionally interrogated by the District Attorney, intimidated and forced to make replies in violation of his constitutional rights in the premises, and was thereafter further interrogated by the representatives of the law, the procuring of his signature to his acknowledgment of the said confession was arbitrary, coercive and in violation of his constitutional rights, and therefore you must disregard entirely the said alleged confession and everything contained therein.

4. Inasmuch as defendant at the magistrate's hearing exercised and declared his desire to exercise his constitutional right to remain silent and not to give evidence against himself, you must disregard entirely and dismiss from your mind all evidence given

by him thereafter in response to the District Attorney's improper and unconstitutional interrogation.

5. In considering the evidence in this case, it is your duty to disregard and to dismiss entirely from your minds anything contained in the alleged confessions of Jasper Johnson and Clarence Lofton, the so-called accomplices of the defendant.

6. The alleged confessions of Jasper Johnson and Clarence Lofton, the so-called accomplices of the defendant, are not legal evidence against defendant inasmuch as their admission deprived defendant of his constitutional right to be confronted by the witnesses against him and to cross-examine them respecting the contents of the same and the manner in which the said confessions were procured.

7. The statements of a self-confessed participant in a murder, whether offered in evidence by way of the direct testimony of such a person or by his individual written confession thereto, are highly suspicious and should be scrutinized and received by the jury, if at all, with the utmost reluctance. Such statements coming from such a tainted source are considered by the law generally as unworthy of credence unless corroborated by other independent and disinterested eviden e. There is no such other independent and disinterested evidence in this case whatsoever corroborating or tending to corroborate the statements contained in the confessions of Jasper

Johnson and Clarence Lofton which have been offered and read into evidence in this case. You should therefore look upon the said alleged confessions with distrust and consider them, if at all, with the utmost caution and reluctance.

8. If the jury believe that the alleged voluntary confession of defendant was obtained by oppressive, coercive, illegal and unconstitutional methods, by reason of which it does not represent the wholly voluntary act of defendant, the said confession is incompetent and inadmissible against defendant and must be entirely disregarded by the jury without regard to its supposed truth.

9. If the jury disregard the alleged confession of defendant as having been unlawfully procured in violation of his constitutional rights, there is then no evidence whatever to connect defendant with the crime charged and the verdict must be not guilty.

10. In the alleged reenactment of the crime charged against defendant, after the magistrate's hearing and after defendant had been committed, the uncontradicted evidence is that defendant declined to make any statement or to take any part therein. I charge you that in so doing defendant acted within his constitutional rights not to give evidence against himself and his declaration to that effect cannot be taken by the jury as constituting in any manner an admission of guilt against his interest. Your duty

therefore is to disregard entirely and to dismiss from your minds in the consideration of this case all testimony relating to the alleged reenactment of the said crime.

11. In considering the admissibility of the alleged voluntary confession in this case, the jury should give heed to any evidence which has been presented to them and which they may believe respecting the prolonged interrogation of defendant by the police, to whatever was said and done during the same, to the failure of the police, having custody of him, to bring him before the proper magistrate for hearing within the time required by law, to their failure to deliver defendant promptly to the county prison following his commitment by the magistrate, to the fact that the defendant at no time had the aid of a lawyer, and to every other credible, relevant fact and circumstances, offered both by the Commonwealth and defendant, that may shed light on the manner in which the alleged confession was secured and on its voluntary or involuntary character.

12. In weighing the evidence in this case the jury should bear in mind that the defendant was arrested almost six months after the alleged crime was committed, that not a single independent, disinterested witness has been called by the Commonwealth against him, and that the entire Commonwealth case rests on the alleged voluntary confession of defendant.

13. If the jury entertain any reasonable doubt as to the entirely voluntary character of the alleged confession of defendant it is their duty to resolve that doubt in favor of defendant and to acquit him.

14. It is the duty of the Commonwealth to establish by competent evidence beyond a reasonable doubt that defendant committed or participated in the commission of the crime charged in the bill of indictment. In determining whether the Commonwealth has done so it is the duty of the jury to disregard all testimony and evidence necessary to constitute guilt, including that concerning the alleged confession of defendant, as to the correctness of which the jury has any reasonable doubt whatsoever.

MOTION AND REASONS FOR NEW TRIAL.

AND NOW, to wit, this 27th day of September, 1946, the Defendant, AARON TURNER, by his attorneys, Edwin P. Rome and C. Budd Palmer, moves the Court for a new trial in the above case and assigns in support of said motion the following reasons:

1. The verdict was against the law.

Additional Reasons in Support of Motion for New Trial

2. The verdict was against the evidence.

3. The verdict was against the weight of the evidence.

4. The verdict was against the charge of the Court.

5. For additional reasons to be filed after the notes of testimony are transcribed, permission to file which is requested.

EDWIN P. ROME,
C. BUDD PALMER,
Attorneys for Defendant.

ADDITIONAL REASONS IN SUPPORT OF MOTION FOR NEW TRIAL.

AND NOW, to wit, this 24th day of October, A. D. 1946, the defendant, Aaron Turner, by his attorneys, Edwin P. Rome and C. Budd Palmer, files these additional reasons in support of the motion and reasons for a new trial:

6. The learned trial Judge erred in overruling defendant's objection to the reading in evidence by the Commonwealth's witness, Daniel O'Mahoney, of a purported statement or confession made by defen-

dant, the record with reference thereto being as follows (Record 34a-40a):

"BY MR. McCLAIN:

Q. Now, will you read that statement to the jury?

MR. ROME: Your Honor ——

THE COURT: I will not have two attorneys trying this case at the same time. It is too confusing. Make up your mind which one of you will try this case.

MR. ROME: Mr. Palmer will conduct the examination. I want to make an objection at this time to the reading of that statement.

THE COURT: Let us have one attorney examining in this case so that it will not confuse the jury. Now, you are objecting to the admission of this statement?

MR. ROME: Yes, sir.

THE COURT: I will overrule your objection and grant you an exception.

MR. ROME: I want to bring to your Honor's attention certain rulings of law.

THE COURT: I am ruling here and I have made my ruling.

BY MR. McCLAIN:

Q. Now, Detective, will you read that statement?

'A. Statement of Aaron Turner, alias Treetop, 26 years, colored, 720 South Marvine Street.

Made in the presence of Detective Lieutenant

Kelly, Homicide Squad, Detective Sergeant Samuel Riccardi No. 2, Homicide Squad. Detectives: Thomas Lennon No. 223, Homicide Squad; Daniel O'Mahony No. 21, Homicide Squad; John A. Carey, No. 4024, Homicide Squad; Wesley Fisher, No. 41, 2nd Detective Division; N. R. Thompson, No. 191, 1st Detective Division; And: Clarence Lofton, 34 years, colored, 412 South 15th Street; Jasper Johnson, alias "Fats," 18 years, colored, 620 South 13th Street. At: Central Cell Room (Room 637, City Hall, at about 9:45 to 12 Noon, Saturday, June 8, 1946. Stenographer: Joseph J. McGonigle, Homicide Squad. Interrogation by: Detective Sergeant Samuel Riccardi No. 2, Homicide Squad.

"Q. What is your name?

A. Aaron Turner.

Q. How old are you?

A. 26.

Q. Where do you live?

A. 720 So. Marvine St.

Q. Do you know why you have been arrested?

A. Yes, for murdering those two men in the broom factory.

Q. You understand that anything that you say in this statement or any one that you mention can and will be used against you at the time of trial in court. Do you understand that?

A. Yes.

Q. Have any promises been made to you to make this statement?

A. No.

Q. Have you been threatened or abused in any manner in order to bring about this statement?

A. No.

Q. Treetop, go on in your own way and tell us exactly what part you took in the homicide of Charles Simmons and Frank Endres, which occurred at about 5:00 P. M., on December 15, 1945, inside the broom factory at 355 North 2nd Street.

A. One day early in December, 1945, I was down on Rock Street. I heard somebody down there say there was a big broom building down there on Second Street and Callowhill and they were cheaper down there than anybody else so I went up there the Thursday before the three of us went up there on that Saturday, and looked the place over.

Then on Saturday (December 15, 1945) I met Clarence at 12th and South and Fats at 12th and Bainbridge in the saloon. I said we have a job to do and they went with me and we went down to 5th and went up to 2nd and Market Streets and we left 2nd and Market Streets and went on around to the broom building and then when we got around to the broom building me and Fats went in and Clarence stayed outside and

then we went in the door together into the office. Fats was in back of me and when we passed in the second door we met the man and I hit him the man with a piece of iron which I had wrapped up in a piece of newspaper and Fats went through his pockets.

Then I went in through the door and this other man in there and then I hit him over the head with the piece of iron and then I got his wallet and went out. Then we came out and went to 8th and Callowhill Streets and we had a few drinks.

Along in the street somewhere we split up the money. Fats gave me some money and I gave Clarence $87.00 and I got about $175 for my share.

We went to 8th and Callowhill and had a few drinks. Then we got a car and went on down to South Street and went to 12th and South and had a few drinks and went to 12th and Bainbridge and that is where we split up. We said that nobody knows nobody if we got arrested."

Q. When you say you looked the place over, the broom factory, located at 355 North 2nd Street, what did you have in mind?

A. I figured it was quiet around there and I figured it was easy money to rob.

Q. That day after you looked the place over, which was the broom factory located at 355 North 2nd Street, what did you do next?

A. I didn't do nothing that Thursday.

Q. What day did you decide to rob this place at 355 North 2nd Street?

A. The very next Saturday.

Q. With whom did you conspire to rob this place?

A. With these boys—Fats and Clarence.

Q. What became of the weapon that you used in the beating of these two men, namely, Frank Endres and Charles Simmons?

A. I threw it away, sir. I couldn't say where.

Q. Can you describe this weapon that you used on December 15, 1945?

A. It was a piece of iron. It was about 11 inches long, 2½ inches wide, ½ inch thick. It had a hole in the end.

Q. How many times did you hit the white men over the head when you entered the premises at 355 North 2nd Street on December 15, 1945, at about 5:00 P. M.?

A. I hit the first man twice and I seen Fats get his wallet from him.

Q. How many times did you hit the second man?

A. I only hit him a couple of times and he went down and I went into his pockets and his wallet and took the wallet and went out with it. There was something over $100.00. I don't know how much. I threw it away while walking out Callowhill Street.

Q. How much money did you give Clarence Lofton?

A. $87.00.

Q. How much did you give Jasper Johnson, alias Fats?

A. I didn't give him any money. He said he got $50.00.

Q. How much money did Jasper Johnson give you?

A. I don't know how much he gave me but I gave Clarence $87.00, out of it and I kept $75.00.

Q. When and where did Jasper Johnson get that money?

A. He got it off the man I hit first.

Q. What did you do with the weapon that you beat these two men over the head with on December 15, 1945, at 355 N. 2nd Street?

A. I put it back in my pocket and then I brought it out when I got three or three and a half blocks away and I threw it away.

Q. Why did you throw the weapon away after the robbery?

A. Because I could get another one.

Q. Did Fats (Jasper Johnson) strike either of these men at any time?

A. No, sir.

Q. Can you read and write?

A. I can read pretty good.

Q. Is there anything else that you wish to add to this statement?

A. No.

Q. Is everything else that you wish to add to this statement?

A. No.

Q. Is everything that you have told us the truth?

A. Yes."'"

7. The learned trial Judge erred in overruling defendant's objection to the reading in evidence by the Commonwealth's witness, Daniel O'Mahoney, of a purported statement or confession made by an alleged accomplice, Jasper Johnson, the record with reference thereto being as follows (Record 42a-47a):

"Q. Now, I ask that you read to the Court and jury the statement made first by Jasper Johnson in the presence of this defendant which was also signed by this defendant and by Johnson who made it and also by Clarence Lofton, who was present.

MR. ROME: If your Honor please, I object to the reading of this statement. In the first place it appears that this man Turner was held by the police for five days without having been brought before a magistrate and he was moved around from place to place and he at no time was given a lawyer.

THE COURT: That is purely argumentative. I will overrule your objection and grant you an exception.

Additional Reasons in Support of Motion for New Trial

BY MR. McCLAIN:

Q. Now, read first the statement made by Jasper Johnson.

A. Statement of Jasper Johnson, 18 years, colored, 620 South 13th Street, alias "Fats."

Made in the presence of: Detective Lieutenant James A. Kelly, Detective Sergeant Samuel Riccardi, No. 2, and Detectives Thomas Lenon No. 223, Detective Daniel O'Mahony No. 44, and John Cary No. 4024, all of the Homicide Squad. Detective N. R. Thompson No. 184, 1st Detective Division, and Detective Wesley Fisher No. 41, Second Detective Division and: Clarence Lofton, 34 years, colored, 412 South 15th Street. Aaron Turner, 26 years, colored, 720 South Marvine Street, "Tree-top."

At: Central Cell Room (Room 637, City Hall), at about 10:12 A. M. on June 8, 1946.

Concerning: The homicide by blunt instrument of Charles Simmons, 52 years, white, and Frank Endres, 62 years, white, which occurred at inside of Ace Broom Factory at about 5:00 P. M., on Saturday, December 15, 1945.

Stenographer: Joseph J. McGonigle, Homicide Squad.

Interrogation by: Detective Sergeant Samuel Riccardi No. 2, Homicide Squad.

"Q. What is your name?

A. Jasper Johnson.

Q. How old are you?

A. 18.

Q. What is your address?

A. 620 South 15th Street.

Q. Do you know why you have been arrested?

A. Yes, for my part in killing the two men in the broom factory.

Q. Now understand that anything you say in this statement or anyone that you may mention can and will be used against you and anyone that you may mention at the time of trial in court. Do you understand that?

A. Yes.

Q. Have you been promised anything to make this statement?

A. No.

Q. Have you been abused in any way or threatened in any manner to bring about this statement?

A. No.

Q. Go on in your own way and tell us just what part you took in the deaths of Frank Endres and Charles Simmons, which occurred December 15, 1945, at 355 North 2nd Street.

A. On Saturday afternoon about the middle of December, 1945, Tree-top and Clarence came to 12th and Bainbridge at Pearl Harbor and Tree-top calls me and says 'Come on, go with me.' I asked him where he was going and he said, 'We are going to get some money.' I asked him, 'What way are you going to get to the money'

because I didn't want no trouble. He says to me, 'It is no trouble, come on.' So I goes along. We goes to 12th and South and we goes down South Street. We stopped down South Street at a hot dog stand by the name of Hot Dog Heaven, between 5th and 6th on South.

We got a couple of sandwiches apiece. I had been drinking pretty heavy. We goes on down to 2nd Street. We goes to 2nd and Market Streets. Clarence says, 'Tree-top, how much farther we got to go? If we have much farther we can catch a trolley.' Tree-top says, 'Clarence, we don't have much farther to walk.' We goes to 2nd and Callowhill.

Tree-top says, 'Clarence, stay on the outside for lookout.' We were at the broom factory then when he said it. He says, 'Fats, come on in with me.' Tree-top goes in the first door. We goes to the next door, two doors right there, something like a little lobby. After we got to this door (indicating to photograph of office door enclosure entrance) we were met by the smallest fellow, a middle aged man. Tree-top slugged him on the side of the head. The fellow was on the floor scuffling, trying to get up. I runs in his pocket pulls out a wallet out of the hip pocket. I looks in the wallet, sees money and takes the money out. I slings the wallet somewhere in the building but I don't know where. I looks around to see Tree-top and the other man.

He was on the floor and Tree was over him. He had done slugged him. I said, 'Tree, let's go,' but I didn't call no name. I goes out running. Tree runs behind me. Clarence follows Tree. We goes near 8th and Callowhill Streets. I looks at the money. I didn't count it. I imagine it was around $175.00. I takes $50. and gives the rest to Tree. I says, 'Tree-top, give Clarence some money' but I don't know how much.

After he gave Clarence money I says to Tree, 'What did you get off the other guy?' He says, 'Nothing.' We goes in the beer saloon at 8th and Callowhill and gets a couple of big shots apiece. Tree goes into the bathroom and he comes out and Clarence says, 'Tree, let's get another shot.' Tree said, 'No, we got enough, let's go.' We catches the 8th Street trolley and came right down to South. We stops at 12th and South, got a couple of shots in there. We left out of there and went in Pearl Harbor at 12th and Bainbridge and that is when we split up.

Q. When you, Tree-top and Clarence Lofton, on December 15, 1945, at about 5:00 P. M., entered the broom factory at 355 North 2nd Street, did you see any weapon of any kind in Tree-top's hand?

A. I seen something wrapped up in a newspaper but I don't know what it was. It was something (indicating about 8 inches). It was very wide (indicating about ¾ of an inch).

Q. Was that the weapon that you saw Aaron Turner, alias Tree-top, strike both men over the head with at 355 North 2nd Street, December 15, 1945?

A. Yes, sir.

Q. How many times did you see Aaron Turner, alias Tree-top, strike either of these men over the head?

A. I am not positive. It was more than once. I don't know how many times.

Q. On December 15, 1945, after you, Clarence Lofton and Aaron Turner, alias Tree-top, robbed these two men what conversation did you have between yourselves?

A. We agreed that if anybody got arrested we didn't know nobody. I don't know you and you don't know me. When we got on the outside just before we split up the money Tree-top says, 'One of the fellows was no trouble but the largest one he had to give a hell of a blow.'

Q. Did you, at any time, during the course of the robbery have any weapon or strike either of these two men?

A. No, sir.

Q. How long have you been friendly with Clarence Lofton?

A. About a couple of years. We have always been friends.

Q. How long have you known Aaron Turner, alias Tree-top?

A. About 1½ years and we have always been friendly.

Q. Can you read and write?

A. Yes, sir.

Q. Is everything you have told us the truth?

A. Yes.

Q. Is there anything else that you wish to add to this statement?

A. No, sir.'"

8. The learned trial Judge erred in overruling defendant's objection to the reading in evidence by the Commonwealth's witness, Daniel O'Mahoney, of a purported statement or confession made by an alleged accomplice, Clarence Lofton. the record with reference thereto being as follows (Record 47a-51a):

"Q. Now, will you read the statement made by Clarence Lofton?

MR. ROME: I object to that also, your Honor.

THE COURT: I will overrule your objection and grant you an exception.

BY MR. McCLAIN:

Q. Go ahead and read that statement.

'A. Statement of Clarence Lofton, 34 years, colored, 412 South 15th Street.

Made in the presence of: Detective Lieutenant James A. Kelly, Detective Sergeant Samuel Riccardi, Detectives Lennon No. 223, O'Mahoney No. 44 and Cary No. 4024, Homicide Squad. Detective N. R. Thompson No. 184, 1st Detective

Division and Detective Wesley Fisher No. 41, 2nd Detective Division, and: Jasper Johnson (alias Fats), 18 years, colored, 620 South 13th St., Aaron Turner (alias Tree-top, 26 years, colored, 720 South Marvine Street.

At: Cell Room, Room 637, City Hall, at about 9:45 A. M., June 8, 1946.

Concerning: The homicide of Charles Simmons, 52 years, white, and Frank Endres, 62 years, white, which occurred inside Ace Broom factory, at about 5:00 P. M., on December 15, 1945.

Stenographer: Joseph J. McGonigle, Homicide Squad.

Interrogation by: Detective Sergeant Samuel Riccardi, No. 2, Homicide Squad.

"Q. What is your name?

A. Clarence Lofton.

Q. How old are you?

A. 34.

Q. What is your address?

A. 412 South 15th Street.

Q. Do you know why you have been arrested?

A. Yes, sir, on account of this crime. For this broom job, the two men killed in the broom factory.

Q. You understand that anything you say in this statement or anyone that you may mention can and will be used against you and anyone

you may mention at the time of trial in court. Do you understand?

A. Yes.

Q. Have you been promised anything to make this statement?

A. No.

Q. Have you been abused in any way or threatened in any manner to bring about this statement?

A. No.

Q. Clarence, go on in your own way and tell us in your own words just what part you took on Saturday afternoon, December 15, 1945, at 355 North 2nd Street where Charles Simmons and Frank Endres was beaten and robbed.

A. The day the crime was committed it was a Saturday afternoon. It was in the middle part of December. So Tree-tops (Aaron Turner) he come to me and says, 'Come on, go with me.' We left out of there and goes to 12th and Bainbridge and he goes to this boy 'Fats' (Jasper Johnson). We left out of there and go on back up South Street. We goes on down South Street, stopped at a hot dog stand got some sandwiches around 5th and South. We left there, walked on down to Second Street. We goes to 2nd and Market Street and asked Tree-top how much further we got to go. Tree-top said he had a job to do. He said he was going to get some money so we goes to the place at 2nd and Cal-

lowhill Streets. He told me to stay outside and watch so him and Fats went on in. Fats and Tree-top went in. They were in there 25 or 30 minutes. So Fats came out running and after a bit Tree-top came out running. So I runs behind them. So we goes on up to 8th and Vine and Fats gave Tree-top some money. So Tree-top gave me $87.00. We goes to a saloon at 8th and Callowhill and we had two double shots of whisky each. Tree-top goes in the bathroom. So when he comes out, I said, 'Let's get another drink' and he says, 'No, we got enough, let's go.' So we get a trolley came on back down South Street. We goes in 10th and South—(CL) Pearl Harbor—12 and Bainbridge. That is when I left out of there. That is all I know.

Q. When you say that Tree-top came to you and told you that he had a job to do to get some money, what did he mean?

A. At the time I didn't know what he meant, if he was going to rob somebody or place and later we found out what he meant.

Q. When you met Tree-top and he told you that he had a job to do what kind of weapon did he have?

A. A piece of sash weight about 8 inches long. I seen him wrap it in paper. He always carried a piece in his pocket.

Q. Before Aaron Turner (alias Tree-top) and Jasper Johnson (alias Fats) and you entered the

premises at 355 North 2nd Street, did you know then that you were there for?

A. Tree-top told me to just only watch to see nobody came in while Tree-top and Fats went in with him to rob somebody.

Q. Where you at any time inside the broom factory at 355 North 2nd Street?

A. No.

Q. Did you at any time see Tree-top or Fats strike anybody in the premises?

A. No, because I was outside. I couldn't see what was going on inside.

Q. After Tree-top and Fats and yourself left the premises at 355 North 2nd Street, what was the conversation, if any, between you three men?

A. We agreed that I don't know you and you don't know me if we got arrested. When they came out of the place one of them, I don't know whether it was Fats or Tree-top, said 'One of them wasn't no trouble at all but one of the sons of bitches I had to give a hell of a blow to.'

Q. Is there anything else you want to add to this statement?

A. No.

Q. Can you read and write?

A. No.

The foregoing statement was read to me by Det. O'Mahony and it is true; I can sign my own name but that is all (Signed) Clarence Lofton."'"

Additional Reasons in Support of Motion for New Trial

9. The learned trial Judge erred in overruling defendant's objection to the line of questioning put to the Commonwealth's witness, Daniel O'Mahoney, whereby there was read into the record testimony given at the Magistrate's hearing by defendant's co-indictee, Clarence Lofton, the record with reference thereto being as follows (Record 56a-57a):

"Q. Did you hear this question asked of Clarence Lofton in the presence of Aaron Turner among other questions? 'Were you there when these events happened?'

Did you hear that?

A. Yes, sir.

Q. Did you hear Clarence Lofton make this answer: 'Yes, sir. He just about covered everything. I was there, and was standing outside watching.'

Did you hear him say that in Turner's presence?

A. Yes, sir.

Q. Did you hear this question asked: 'Q. You corroborate what he has said?' Lofton then said in the presence of Turner 'That is right.'

A. Yes, sir."

(Record 110a):

"MR. ROME: I ask for an exception to the admission in evidence of the Magistrate's testimony read to the witnesses, Lieutenant Kelly, Sergeant Riccardi and Detective O'Mahoney:

also as to anything relating to the Magistrate's testimony. Also I ask for an exception to the reading into the evidence of the confessions; also exception to the admission of testimony relating to the re-enactment of the crime.

THE COURT: Exceptions may be noted as requested."

10. The learned trial Judge erred in overruling defendant's objection to the question put to the Commonwealth's witness, Daniel O'Mahoney whereby there was read into the record testimony given at the magistrate's hearing by defendant and his co-indictees, Clarence Lofton and Jasper Johnson, the record with reference thereto being as follows (Record 57a-60a):

"Q. Did you hear Aaron Turner asked this question in front of Magistrate Williams: 'Can you add anything?

A. No, sir.'

MR. ROME: I object to that. It appears from the transcript of the testimony ——

THE COURT: I don't have a copy of the testimony before me.

BY MR. McCLAIN:

Q. Did you hear this question asked: 'Q. Do you want to say anything to his Honor?'

MR. ROME: That is not what appears there.

BY MR. McCLAIN:

Q. 'Do you want to say anything to his Honor?

A. No, sir. Q. Can you add anything? A. No, sir.'

MR. ROME: It appears from that question and answer inasmuch as the defendant had already been warned by the district attorney that he was attempting to get some information. I think it is improper to introduce. He said, 'Do you want to say anything to his Honor,' and the answer was 'No, sir.' He was attempting in his way to claim privilege.

THE COURT: That is your interpretation of it. I will admit it subject to your objection and grant you an exception.

BY MR. McCLAIN:

Q. Now, Turner was asked the following questions: 'Can you add anything? A. No, sir. Q. You don't want to add anything. Do you agree with the testimony that these two men have given in court?

A. Yes, sir.

Q. You corroborate their testimony?

A. Yes, sir.

Q. You say that is true?

A. Yes, sir.

Q. You are not denying anything that they said?

A. No, sir.

Q. How much money did you get in this?

A. I don't know.

Q. About how much?

A. I would say $175.

Q. Did you divide up with the others? Was that $175 that which you yourself got out of the thing?

A. Yes.

Q. Was that in addition to the $50 that one got and the $175 the other got?

A. No, sir.

Q. That's your share?

A. Yes, sir.

Q. You got $175 yourself?

A. Yes, sir.'

Now, Clarence Lofton was recalled and did you hear Clarence Lofton—did you hear these questions asked by the assistant district attorney:

'Q. Will you tell his Honor how much you got out of this?

A. About $87 is what he gave me.

Q. That was given to you by Treetop Turner?

A. That's right.'

Then Jasper Johnson was recalled and did you hear these questions asked by the assistant district attorney?

'Q. How much did you get?

A. $50.

Q. How much was in the wallet?

A. I estimated about $175. I wasn't sure.

Q. Whom did you get that from?

A. The first white fellow in the building he

slugged. I passed it to Treetop.'

Did you hear those questions and answers?

A. Yes, sir.

MR. ROME: Having objected primarily I ask that all this evidence be stricken out.

THE COURT: I will overrule your objection and grant you an exception.

BY MR. McCLAIN:

Q. That ends your connection with the matter?

A. Yes, sir."

(Record 110a):

"MR. ROME: I ask for an exception to the admission in evidence of the Magistrate's testimony read to the witnesses, Lieutenant Kelly, Sergeant Riccardi and Detective O'Mahoney: also as to anything relating to the Magistrate's testimony: Also I ask for an exception to the reading into evidence of the confessions; also exception to the admission of testimony relating to the re-enactment of the crime.

THE COURT: Exceptions may be noted as requested."

11. The learned trial Judge erred in overruling defendant's objection to the question put to the Commonwealth's witness, Lieutenant Kelly, whereby there was read into the record testimony given at the Magistrate's hearing by defendant's co-indictee,

Jasper Johnson, the record with reference thereto being as follows (Record 78a-82a):

"Q. Do you remember him being asked these questions by the assistant district attorney, Mr. Burke:

'Q. Now, what is your name?

A. Jasper Johnson.

Q. Are you also known as James Johnson, Fats and Playboy?

A. Yes, sir.

Q. What is your residence?

A. 620 South 13th Street.

Q. You have heard the testimony of Lieutenant Kelly before his Honor this morning?

A. Yes, sir.

Q. Do you want to add anything to that?

A. Yes, sir.

Q. Were you connected with the activities that Lieutenant Kelly testified to?

A. Yes, sir.

Q. Were you involved in the homicide of Charles Simmons and Frank Endres?

A. Yes, sir.

Q. What part did you play in that?

A. December 15, at 12th and Bainbridge Aaron Turner and Clarence Lofton came to 12th and Bainbridge Street and got me. Treetop said to me ——

Q. Who is Treetop?

Additional Reasons in Support of Motion for New Trial

A. Aaron Turner said to me, "Come on Fats and go with me. I'm going to get some money." I said to Treetop, I said, "I don't mind going but I don't want no trouble." He said, "There were no trouble. Come on." We goes to 12th and South and from 12th and Bainbridge and stopped between 5th and 6th at a hot dog stand and gets a couple of sandwiches apiece. We leave there. We goes to 2nd Street. We goes to start and I had been drinking and we were beginning to get sick. So Clarence said, "Treetop, if it gets much further we'll catch a trolley." Treetop said, "We don't have much more to go so we'll walk on down." So, we walked to 2nd and Callowhill. Treetop says to Clarence, "You wait on the highway." Treetop and I goes in the first door together. We goes in the first door together and gets on the inside. Treetop had a package in his pocket, a pipe wrapped up in newspaper.

Q. A package? What kind of a package?

A. A piece of sashweight wrapped up in paper, about eight inches long and about that round (indicating one inch). We get to the first floor. Treetop drops ahead.

Q. Did you follow him in?

A. I followed him in. He gets one of the guys. The smallest guy he slugs. I don't know how many times he slugged him.

Q. Did you see that?

A. Yes, sir. After Treetop slugs him I gets in his pocket and gets his wallet. I was trying to get it out of his hip pocket. I slings the wallet in the building where I don't know. So when I looks around, Treetop and this other guy is tussling.

Q. You saw him tussling with another man?

A. Another white man. So after I gets through mine I looks around and said, "Let's go." So I leave out running. Treetop follows.

Q. You mean you left the place?

A. I left running. Treetop follows. After Clarence sees us running Clarence follows us.

Q. What was Lofton doing?

A. He was the watch out man. He never entered the building. So, we goes on down the street. We get near 8th and Callowhill, somewhere close by. I look at the money, I don't know exactly how much, it looks like $175.

Q. You testified before that you threw the wallet away?

A. I takes the money out before I threw it away. So, I takes $50. I hand the other to Treetop. Treetop gave Clarence some money, I don't know how much. So, after Treetop gives Clarence the money ——

Q. Did you see him give Clarence the money?

A. I saw him but I don't know how much. I said to Treetop, "How much—what did you get off the other fellow?" He said, "Nothing." We

go to 8th and Callowhill and gets a couple of large drinks. Treetop goes in the bathroom and comes out. We catch an 8th Street trolley and go back down town to 12th and South. We get a couple of drinks in there and goes from 12th and South to 12th and Bainbridge where I met him and get a couple of more drinks and splits up there.

Q. Up until then you had been together?

A. That's right. The next what was said, Treetop said to me and Clarence, "Anybody gets arrested you don't know me and I don't know you."

Q. Who said that?

A. Aaron Turner—Treetop.

Q. Then what happened?

A. That's all; we split up.

Q. How about this second man in the room?

A. Treetop had him.

Q. What was he doing to him?

A. When I looked around, him and Treetop was tussling.

Q. Did you see Treetop slug him?

A. I saw some blood.

Q. Did Treetop still have this object in his hand?

A. I'm not sure whether he had that sash-weight at the time or not.

Q. Did you see Treetop slug him or the second man?

A. That's right.

Q. Was the first man on the floor at the time?

A. Yes, sir, he was on the floor and I was trying to get him to stop it.

Q. Was he lying on the floor when you three left?

A. Yes, sir.

Q. Anything else you can add?

A. No, sir.'

Did you hear those questions asked of Mr. Johnson?

A. Yes, sir.

MR. ROME: I would like to renew my previous motion that this testimony all be stricken out.

THE COURT: I will overrule your objection and grant you an exception."

(Record 110a):

"MR. ROME: I ask for an exception to the admission in evidence of the Magistrate's testimony read to the witnesses, Lieutenant Kelly, Sergeant Riccardi and Detective O'Mahoney: also as to anything relating to the Magistrate's testimony: Also I ask for an exception to the reading into evidence of the confessions; also exception to the admission of testimony relating to the re-enactment of the crime.

THE COURT: Exceptions may be noted as requested."

Additional Reasons in Support of Motion for New Trial

12. The learned trial Judge erred in overruling defendant's objection to the question put to the Commonwealth's witness, Lieutenant Kelly, whereby there was read into the record testimony given at the Magistrate's hearing by defendant's co-indictee, Clarence Lofton, the record with reference thereto being as follows. (Record 82a-83a):

"Q. Did you hear the district attorney ask Mr. Lofton these questions:

MR. ROME: I renew my objection as to this testimony also, your Honor.

THE COURT: I will overrule your objection and grant you an exception.

BY MR. McCLAIN:

Q. Did you hear these questions asked of Mr. Lofton:

'Q. You have been told that anything you say may be used against you, and that you don't have to speak unless you want to. However, I am going to give you the opportunity of speaking if you want to. You have just heard the story of Jasper Johnson. Anything you can add to that?

A. No, sir, I haven't anything to add to it.

Q. Were you there when these events happened?

A. Yes, sir. He just about covers everything. I was there and was standing outside watching.

Q. You corroborate what he said?

A. That's right.'

Did you hear those questions asked in the presence of this defendant?

A. I did, sir."

13. The learned trial Judge erred in overruling defendant's objection to the question put to the Commonwealth's witness, Lieutenant Kelly, whereby there was read into the record testimony given at the Magistrate's hearing by defendant, Aaron Turner, the record with reference thereto being as follows (Record 83a-85a):

"Q. Then did you see Aaron Turner, this defendant, sworn?

A. Yes, sir.

MR. ROME: I renew my objection as to the reading of this testimony.

THE COURT: Objection overruled. Exception granted.

BY MR. McCLAIN:

Q. Did you hear Mr. Burke, the assistant district attorney address this defendant as follows:

'Q. Do you want to say anything to his Honor?

A. No, sir.

Q. Can you add anything?

A. No, sir.

Q. You don't want to add anything? Do you agree with the testimony that these two men have given in court?

A. Yes, sir.

Q. Do you corroborate their testimony?

A. Yes, sir.

Q. You say that it's true?

A. Yes.

Q. You are not denying anything that they said?

A. No, sir.

Q. How much money did you get?

A. I don't know.

Q. About how much?

A. I would say about $175.

Q. Did you divide up with the others? Was that $175 that which you yourself got out of the thing?

A. Yes, sir.

Q. Was that in addition to the $50 that one got and the $175 the other got?

A. No, sir.

Q. That is your share?

A. Yes, sir.

Q. You got $175 yourself?

A. Yes, sir.'

Is that what was asked and are they the answers which were given?

A. Yes, they are the answers he made at that hearing.

MR. ROME: I renew my previous motion.

THE COURT: I will overrule your objection and grant you an exception."

Additional Reasons in Support of Motion for New Trial

14. The learned trial Judge erred in overruling defendant's objection to the question put to the Commonwealth's witness, Lieutenant Kelly, whereby there was read into the record testimony given at the Magistrate's hearing by defendant's co-indictee, Clarence Lofton, the record with reference thereto being as follows (Record 85a-86a):

"Q. Did you hear the questions and answers that were addressed to Clarence Lofton when he was interrogated as follows by Mr. Burke?

MR. ROME: I object to that, your Honor.

THE COURT: I will overrule your objection and grant you an exception.

BY MR. McCLAIN:

Q. Did you hear the following questions:

'Q. Will you tell his Honor how much you got out of this?

A. About $87 is what he gave me.

Q. That was given to you by Treetop Turner?

A. That's right.'

Is that right?

A. Yes, sir.

Q. Now, Johnson was recalled as follows:

'Q. How much did you get?

A. $50.

Q. How much was in the wallet?

A. I estimated about $175. I wasn't sure.

Q. Whom did you get that from?

A. The first white fellow in the building he slugged. I passed it to Treetop.'

Did you hear those questions asked in open court?

A. Yes, sir."

15. The learned trial Judge erred in admitting the testimony of the Commonwealth's witness, Samuel Riccardi, concerning an alleged reenactment of the crime charged, the record with reference thereto being as follows (Record 94a-96a):

"Q. Following the magistrate's hearing and the signing of these statements on June 10, 1946, did you in company with other detectives and these defendants, Aaron Turner and Jasper Johnson and Clarence Lofton, go to the scene of this alleged robbery and homicide at 355 North 2nd Street?

A. Yes, sir.

Q. Sergeant Riccardi, there was a memorandum taken of everything that occurred on these premises; is that correct?

A. Yes, sir.

Q. You have refreshed your recollection from that memorandum?

A. Yes, sir.

Q. Now, tell his Honor and the jury everything that occurred on June 10 at the scene of this crime in which this defendant was present.

A. On June 10, at approximately 4:25 p. m., we took the defendant, Aaron Turner and Jasper Johnson and Clarence Lofton to the Ace

Broom Factory at 355 North 2nd Street. We entered the premises and on the premises at that time there was also a Mrs. Simmons who is the wife of the deceased.

Q. It was at 4:25 p. m.?

A. Yes, sir, and I asked Jasper Johnson was he familiar with this place and did he recognize this place and he said, 'I do.' He said that on December 15 he and Aaron Turner and Clarence Lofton went down there and he entered the place with Aaron Turner and upon entering the place one white man came near the elevator and Aaron Turner slugged him over the head with this bar which apparently seemed like a sash weight. He reached down and took a wallet and in the meantime another white man came in and he said that Aaron Turner slugged him over the head and they both went out while Clarence Lofton was on the outside as a lookout at the front door.

Q. In other words, what did you do there, re-enact what happened?

A. Yes, sir, we re-enacted the part that each one took and after that ——.

Q. After your re-enactment of that offense did this defendant do anything or say anything?

A. I asked Aaron Turner in the presence of the other two defendants and the people in the broom factory and he said he did not wish to say anything.

Q. Did he deny what had been re-enacted?

A. No, sir.

Q. You say there was a Mrs. Simmons there?

A. Mrs. Simmons was in the place and one other gentleman in the office who works there.

Q. Who were the actors in this re-enactment?

A. Clarence Lofton and Jasper Johnson and Aaron Turner.

Q. Who took part in the re-enactment?

A. They did.

Q. You had three men, Jasper Johnson, this defendant, Turner and Clarence Lofton?

A. Yes, sir.

Q. You took them to this factory?

A. Yes.

Q. You went inside the door and said to them, 'I want to see a re-enactment of what happened?' Is that correct?

A. I asked the defendant, 'Do you recognize this place'?

Q. You got into the place?

A. Yes, sir.

Q. Then you had to go through the re-enactment?

A. Yes, sir.

Q. What did Turner do?

A. He had nothing in his hand and he said, 'I have nothing to say,' and at this time he had nothing to say but Jasper Johnson did show us by pointing and indicating just where Mr. Sim-

mons who was the first one who was struck near the elevator was and Clarence Lofton put himself at the front door on the lookout.

Q. Turner did not take part as an actor in that scene in that room that day?

A. No, sir."

(Record 110a):

"MR. ROME: I ask for an exception to the admission in evidence of the Magistrate's testimony read to the witnesses, Lieutenant Kelly, Sergeant Riccardi and Detective O'Mahoney: also as to anything relating to the Magistrate's testimony: Also I ask for an exception to the reading into evidence of the confessions; also exception to the admission of testimony relating to the re-enactment of the crime.

THE COURT: Exceptions may be noted as requested."

16. The learned trial Judge erred in admitting the testimony of the Commonwealth's witness, Charles E. Moore, concerning an alleged reenactment of the crime charged, the record with reference thereto being as follows (Record 99a-101a):

"Q. On June 10, 1946, were you present at the time this defendant, Aaron Turner, and one Jasper Johnson and one Clarence Lofton were brought to the premises in company with the detectives?

A. Yes, sir.

Q. Did you see what transpired at the Ace Broom premises on that day?

A. Yes, sir.

Q. What did you see?

A. Well, three colored men were brought in and several detectives who were in charge of this case and they asked whether or not the place was familiar to them and they said yes.

Q. What else happened?

A. Then one of the detectives asked one of the colored men just what had happened and he said ——

Q. Did he or did he not show him what happened?

A. What?

Q. Did the colored man show what happened?

MR. ROME: If your Honor please ——

BY THE COURT:

Q. Was the defendant there?

A. Yes, sir.

BY MR. McCLAIN:

Q. What did you see done in the presence of this defendant?

A. Well, one of them described ——

MR. ROME: He has not identified which one.

THE COURT: The detectives have already told us who they were. It is a general group of people. The police department had taken this defendant and his two friends.

Additional Reasons in Support of Motion for New Trial

BY THE COURT:

Q. Did this defendant say anything in front of you?

A. No, sir.

Q. Did the other two defendants?

A. Yes, sir.

Q. The other two did?

A. Yes, sir.

BY MR. McCLAIN:

Q. What did he do in the presence of this defendant?

A. Well, he related what had happened in the shop and said that two of them came in and this colored man hit one of the men on the head.

Q. What colored man?

A. He went through their pockets.

BY THE COURT:

Q. What colored man hit somebody on the head?

A. Well, there was three of them altogether. I am not acquainted with them by their names.

BY MR. McCLAIN:

Q. In your presence, Mr. Moore, was any threat made to this defendant or the other two men?

A. Oh, no, sir.

Q. Were they abused in your presence, in any way?

A. No, sir, they were treated very nicely, I thought."

Additional Reasons in Support of Motion for New Trial

(Record 110a):

"MR. ROME: I ask for an exception to the admission in evidence of the Magistrate's testimony read to the witnesses, Lieutenant Kelly, Sergeant Riccardi and Detective O'Mahoney: also as to anything relating to the Magistrate's testimony: Also I ask for an exception to the reading into evidence of the confessions; also exception to the admission of testimony relating to the re-enactment of the crime.

THE COURT: Exceptions may be noted as requested."

17. The learned trial Judge erred in admitting the testimony of the Commonwealth's witness, Julia A. Simmons, concerning an alleged reenactment of the crime charged, the record with reference thereto being as follows (Record 103a-104a):

"Q. On June 10, 1946, were you in the premises of the Ace Broom Company, 355-57 North 2nd Street, when the detectives came there?

A. Yes, sir.

Q. Was this defendant there at that time?

A. Yes, sir.

Q. Did you see and hear what happened?

A. Oh, yes.

Q. In your presence were any threats made to this defendant or either or both of the other colored men?

A. No, sir.

Q. Was there any violence given to them?

A. No, sir.

Q. What did you see happen or what did you hear?

A. The three men were brought in and this man was in the middle and the detective asked Johnson, the short fellow, if he had ever been in that place before and he said, 'Yes.' Then the detective said, 'Go ahead and tell us under what circumstances you were here,' and Johnson went ahead and described the day that the crime took place and he described the incident.

Q. Did this defendant say anything?

A. They asked him if he wanted to say anything and he said he had no desire to talk."

(Record 110a):

"MR. ROME: I ask for an exception to the admission in evidence of the Magistrate's testimony read to the witnesses, Lieutenant Kelly, Sergeant Riccardi and O'Mahoney: also as to anything relating to the Magistrate's testimony: Also I ask for an exception to the admission of testimony relating to the re-enactment of the crime.

THE COURT: Exceptions may be noted as requested."

18. The learned trial Judge erred in charging the jury concerning the requirements as to taking a

person under arrest before a Magistrate, that portion of the charge and the exception thereto being as follows (Record 199a-200a):

"* * * The law is common sense, and we must regard these things in a sensible manner. You do not send them to the magistrate before you have sufficient information to hold an alleged culprit for the Grand Jury. There must be prima facia evidence before the police can take them."

(Record 204a):

"MR. ROME: I ask for an exception to that portion of Your Honor's charge where you state that the police do not have to rush a defendant to the magistrate before they have a prima facia case. According to the statutes, it is necessary to bring a person arrested before the magistrate

———

THE COURT: That is right,—it does not say when, and they did bring him before the magistrate.

MR. ROME: I think the cases require that it be done forthwith, which would not be to bring him in five days later.

THE COURT: You do not presume to think if they were wrong in delaying the hearing four or five days that it would affect the question of whether he is or is not guilty?

(Exception to defendant.)"

Additional Reasons in Support of Motion for New Trial

19. The learned trial Judge erred in charging the jury concerning defendant's right to counsel, that portion of the charge and the exception thereto being as follows (Record 200a):

> "* * * Much has been said about the fact that the defendant did not have a lawyer. The Police Department does not suggest a lawyer. If he asks for a lawyer, the Police Department will get him in touch with a lawyer. From the evidence, I understand he could not hire a lawyer. His financee knew he was arrested, and she tried to get him a lawyer, but the lawyer wanted so much money he could not pay him. He has since had a lawyer—these two gentlemen appointed by the Court—to represent him. If he had asked for a lawyer, it was the duty of the police to see that he had the lawyer; but the police testified he never asked for one."

(Record 204a-205a):

> "MR. ROME: I ask for an exception to that portion of Your Honor's charge where you say the police do not have to recommend a lawyer.
>
> THE COURT: I think I have covered that fairly with you.
>
> (Exception to defendant.)
>
> MR. ROME: Under the cases, a man has the right to counsel in every proceeding against him.
>
> THE COURT: I said that very thing—he has the right to get in touch with a lawyer.

MR. ROME: In a capital case, the Commonwealth has the duty of providing counsel.

THE COURT: They did. I don't know when you were appointed—I have no idea.

MR. ROME: I was appointed after the magistrate's hearing. I submit he should have a lawyer for every phase of the proceeding, which includes the magistrate's hearing.

(Exception to defendant.)"

20. The learned trial Judge erred in refusing defendant's first point for charge, the point and the ruling thereon being as follows (Record 208a, 203a):

"1. Under all the evidence in this case your verdict must be in favor of the defendant."

"(Exception to defendant to refusal of points for charge.)"

21. The learned trial Judge erred in refusing defendant's second point for charge, the point and the ruling thereon being as follows (Record 208a, 203a):

"2. There is no competent and admissible evidence in favor of the Commonwealth."

"(Exception to defendant to refusal of points for charge.)"

22. The learned trial Judge erred in refusing defendant's third point for charge, the point and the ruling thereon being as follows (Record 208a, 203a):

"3. The only evidence which purports to con-

nect the defendant with the alleged murder of Frank Endres in his alleged voluntary confession which has been offered and read in evidence in this case. The said alleged voluntary confession discloses on its fact that it was taken between the hours of 9 a. m. and noon on June 8, 1946. In the absence of other evidence more specifically designating the time on the said day on which the said alleged confession was made and signed by the defendant, and inasmuch as the evidence in this case discloses that during the said period, before the taking and the signing were completed, the defendant was given a hearing before a magistrate at which time he exercised and declared his desire to exercise his constitutional right to remain silent and not to give evidence against himself; and inasmuch as notwithstanding his said declaration and intent he was unlawfully and unconstitutionally interrogated by the District Attorney, intimidated and forced to make replies in violation of his constitutional rights in the premises, and was thereafter further interrogated by the representatives of the law, the procuring of his signature to his acknowledgment of the said confession was arbitrary, coercive and in violation of his constitutional rights, and therefore you must disregard entirely the said alleged confession and everything contained therein."

"(Exception to defendant to refusal of points for charge.)"

23. The learned trial Judge erred in refusing defendant's fourth point for charge, the point and the ruling thereon being as follows (Record 209a, 203a):

"4. Inasmuch as defendant at the magistrate's hearing exercised and declared his desire to exercise his constitutional right to remain silent and not to give evidence against himself, you must disregard entirely and dismiss from your mind all evidence given by him thereafter in response to the District Attorney's improper and unconstitutional interrogation."

"(Exception to defendant to refusal of points for charge.)"

24. The learned trial Judge erred in refusing defendant's fifth point for charge, the point and the ruling thereon being as follows (Record 210a, 203a):

"5. In considering the evidence in this case, it is your duty to disregard and to dismiss entirely from your minds anything contained in the alleged confessions of Jasper Johnson and Clarence Lofton, the so-called accomplices of the defendant."

"(Exception to defendant to refusal of points for charge.)"

25. The learned trial Judge erred in refusing defendant's sixth point for charge, the point and the

ruling thereon being as follows (Record 210a, 203a):

"6. The alleged confessions of Jasper Johnson and Clarence Lofton, the so-called accomplices of the defendant, are not legal evidence against defendant inasmuch as their admission deprived defendant of his constitutional right to be confronted by the witnesses against him and to cross-examine them respecting the contents of the same and the manner in which the said confessions were procured."

"(Exception to defendant to refusal of points for charge.)"

26. The learned trial Judge erred in refusing defendant's seventh point for charge, the point and the ruling thereon being as follows (Record 210a, 203a):

"7. The statements of a self-confessed participant in a murder, whether offered in evidence by way of the direct testimony of such a person or by his individual written confession thereto, are highly suspicious and should be scrutinized and received by the jury, if at all, with the utmost reluctance. Such statements coming from such a tainted source are considered by the law generally as unworthy of credence unless corroborated by other independent and disinterested evidence. There is no such other independent and disinterested evidence in this case

whatsoever corroborating or tending to corroborate the statements contained in the confessions of Jasper Johnson and Clarence Lofton which have been offered and read into evidence in this case. You should thereafter look upon the said alleged confessions with distrust and consider them, if at all, with the utmost caution and reluctance."

"(Exception to defendant to refusal of points for charge.)"

27. The learned trial Judge erred in refusing defendant's eighth point for charge, the point and the ruling thereon being as follows (Record 211a, 203a):

"8. If the jury believe that the alleged voluntary confession of defendant was obtained by oppressive, coercive, illegal and unconstitutional methods, by reason of which it does not represent the wholly voluntary act of defendant, the said confession is incompetent and inadmissible against defendant and must be entirely disregarded by the jury without regard to its supposed truth."

"(Exception to defendant to refusal of points for charge.)"

28. The learned trial Judge erred in refusing defendant's ninth point for charge, the point and the ruling thereon being as follows (Record 211a, 203a):

"9. If the jury disregard the alleged confession of defendant as having been unlawfully procured in violation of his constitutional rights, there is then no evidence whatever to connect defendant with the crime charged and the verdict must be not guilty."

"(Exception to defendant to refusal of points for charge.)"

29. The learned trial Judge erred in refusing defendant's tenth point for charge, the point and the ruling thereon being as follows (Record 211a, 203a):

"10. In the alleged reenactment of the crime charged against defendant, after the magistrate's hearing and after defendant had been committed, the uncontradicted evidence is that defendant declined to make any statement or to take any part therein. I charge you that in so doing defendant acted within his constitutional rights not to give evidence against himself and in his declaration to that effect cannot be taken by the jury as constituting in any manner an admission of guilt against his interest. Your duty therefore is to disregard entirely and to dismiss from your minds in the consideration of this case all testimony relating to the alleged reenactment of the said crime."

"(Exception to defendant to refusal of points for charge.)"

Additional Reasons in Support of Motion for New Trial

30. The learned trial Judge erred in refusing defendant's eleventh point for charge, the point and the ruling thereon being as follows (Record 212a, 203a):

"11. In considering the admissibility of the alleged voluntary confession in this case, the jury should give heed to any evidence which has been presented to them and which they may believe respecting the prolonged interrogation of defendant by the police, to whatever was said and done during the same, to the failure of the police, having custody of him, to bring him before the proper magistrate for hearing within the time required by law, to their failure to deliver defendant promptly to the county prison following his commitment by the magistrate, to the fact that the defendant at no time had the aid of a lawyer, and to every other credible, relevant fact and circumstances, offered both by the Commonwealth and defendant, that may shed light on the manner in which the alleged confession was secured and on its voluntary or involuntary character."

"(Exception to defendant to refusal of points for charge.)"

31. The learned trial Judge erred in refusing defendant's twelfth point for charge, the point and the ruling thereon being as follows (Record 212a, 203a):

"12. In weighing the evidence in this case the

jury should bear in mind that the defendant was arrested almost six months after the alleged crime was committed, that not a single independent, disinterested witness has been called by the Commonwealth against him, and that the entire Commonwealth case rests on the alleged voluntary confession of defendant."

"(Exception to defendant to refusal of points for charge.)"

32. The learned trial Judge erred in refusing defendant's thirteenth point for charge, the point and the ruling thereon being as follows (Record 213a, 203a):

"13. If the jury entertain any reasonable doubt as to the entirely voluntary character of the alleged confession of defendant it is their duty to resolve that doubt in favor of defendant and to acquit him."

"(Exception to defendant to refusal of points for charge.)"

33. The learned trial Judge erred in refusing defendant's fourteenth point for charge, the point and the ruling thereon being as follows (Record 213a, 203a):

"14. It is the duty of the Commonwealth to establish by competent evidence beyond a reasonable doubt that defendant committed or participated in the commission of the crime

charged in the bill of indictment. In determining whether the Commonwealth has done so it is the duty of the jury to disregard all testimony and evidence necessary to constitute guilt, including that concerning the alleged confession of defendant, as to the correctness of which the jury has any reasonable doubt whatsoever."

"(Exception to defendant to refusal of points for charge.)"

C. BUDD PALMER,
EDWIN P. ROME,
Attorneys for Defendant.

OPINION.

SMITH, P. J.:

Aaron Turner, the defendant, on September 19, 1946 went on trial before Smith, P. J. and a jury, charged with Bill of Indictment No. 646 of June Sessions, 1946 for the murder of Frank Endres. He was found guilty by the jury of murder in the first degree and the sentence of death was imposed. The defendant thereupon filed a Motion for new trial and argument on the said Motion was heard by McDevitt, P. J., Sloane, J., and Smith, P. J.

On Saturday, December 15, 1945, at about 5 P. M., police officer Monaghan tried the door of the Ace

Broom Company, situate 355 North 2nd Street, Philadelphia, Pennsylvania, and finding the door unlocked, entered the premises. On the inside of the door on the first floor, the police officer found the bodies of two men lying in pools of blood, and suffering from severe head injuries. Frank Endres and Charles Simmons were unconscious and died shortly thereafter at the hospital. The coroner's physician testified that the cause of death in each case was "crush of the skull". The evidence showed that the skulls of these two men had been battered with sash weights. The Commonwealth elected to try the defendant, Aaron Turner, on the indictment charging him with the murder of Frank Endres.

There was no eyewitness of these murders. About six months thereafter, to wit, on June 3, 1946, the police apprehended Aaron Turner purportedly as a result of police investigation implicating him in these crimes. On the same day, Jasper Johnson, an alleged confederate, was apprehended by the police. On May 24, 1946, Clarence Lofton, the third man alleged to have been involved in these murders, had been apprehended by the police officers.

On the morning of June 8, 1946, the defendant, Aaron Turner and his alleged confederates, Johnson and Lofton, each made separate confessions in the presence of each other, to members of the Philadelphia Police Force, which statements were reduced to writing and signed by each. Turner (the defendant in this case), Johnson and Lofton, also signed the separate confessions made by their confederates. At

his trial, Aaron Turner repudiated his confession and testified that he had been compelled to make and sign the written statement by fear, physical punishment and duress.

The argument of the defense asking for a new trial is based primarily on the theory that the defendant's confession was not voluntary, but was forced from him by the use of threats, beatings and intimidations by the police. The defendant also contends that the written confessions of Johnson and Lofton, his alleged confederates, should not have been admitted in evidence; that the defendant was denied his constitutional right to counsel; that he was denied his constitutional privilege against self-incrimination; that he was denied his constitutional right to be confronted with witnesses against him; and that he was illegally held by the police.

The evidence shows by inference at least that the defendant was placed in custody by the police without a warrant first having been issued, because they had only reasonable grounds to believe that he might be involved in two murders, and that they desired to question him and others. We are aware of the fact that it is improper for an innocent man to be apprehended and detained in the custody of the police, and that the courts in all jurisdictions condemn such practice even to the point where the officers are held liable in damages. But it is also true that the law favors honest efforts to bring the guilty to justice. In *McCarthy v. De Armit*, 99 Pa. 63, 71, it was said:

"The fact of felony, and reason for suspecting a particular person, justify his arrest by a private person. But a peace officer, who arrests one upon reasonable suspicion of felony, will be excused, even though it appear afterwards that in fact no felony had been committed. It may be expected that a felon will flee from justice, if an opportunity is afforded him, and that if he knows he is suspected he will do what may be in his power to obliterate the evidences of his crime. In these circumstances are found forcible reasons for prompt action in his arrest. The public safety, and due apprehension of criminals charged with heinous crimes, imperiously require that such arrests should be made without warrant by officers of the law. 'Many an innocent man has been and may be taken up on suspicion; but the mischief and inconvenience to the public, in this point of view, is comparatively nothing; it is of great consequence to the police of the country.' Burns v. Erbe, supra; Rohan v. Sawin, 5 Cush. 281; Wakely v. Hart, supra; Cooley on Torts 174."

Common sense tells us that in cases of brutal, vicious murder where the victim is dead and the murderer is the only living person who was present at the scene of the crime, all such crimes would go unpunished if the police officers were entirely hampered in their efforts to procure information upon which to base a charge of homicide. In many such cases, it is

only by patient, determined, and searching police work that the officers may get sufficient information upon which to base a reasonable suspicion that a certain person was involved in the crime. Society demands that this be so. It is clear that in matters based only upon a reasonable suspicion of guilt that the police could not present sufficient evidence to enable a magistrate to hold a person for the Grand Jury, and that if this was the only course that the police could pursue, many guilty persons could bring about their discharge on a writ of habeas corpus, and thus be forewarned by the information then had by the police. In this manner a vicious killer would have to be released on a society otherwise unable to cope with him. It seems to us as long as the actions of the police are those which would have the approval of sober-minded, reasonable men, that they should be permitted to make such proper investigation to solicit the truth, so that the man in custody might either be discharged or brought before a magistrate as soon as is reasonably practical for a hearing. The question of whether the detention of the accused be for an hour, or a day, or for five days, is not the deciding factor since inherently any detention for any period of time, no matter how short, may be classed as coercive. It is contended by the defense that any detention beyond a period of 36 hours is prima facie evidence of coercion. It is our opinion that the period of time may be taken into consideration in determining the question of whether the statement of the person detained is a free and

voluntary confession or whether the period of detention was material in forcing an involuntary statement from him. It is one of the elements to be considered, and in reaching a determination of this question, the judge and the jury having the defendant before them are best able to decide whether or not he is of a mental and physical type to be or not to be affected alone by the period of detention. No one is in such a good position as to determine the effects of a detention as the Court and jury before whom he appeared and was tried. They had all of the witnesses, including the defendant, before them and they are best able to judge the effect on the prisoner of what occurred before he made his statement to the police: *Comwlth. v. Aston*, 227 Pa. 112; *Comwlth. v. Johnson*, 162 Pa. 63; *Comwlth. v. Johnson*, 217 Pa. 77; *Comwlth. v. Jones*, 297 Pa. 326, 334.

After a study of the defendant as he appeared in court, and a consideration of the testimony, it is our opinion that his detention without more is not sufficient for the granting of a new trial. In *Comwlth. v. Spardute*, 278 Pa. 37, it was stated that the mere fact that a person is under arrest, or that he is in charge of armed police officers when he makes a confession, does not make such confession involuntary. The fact that he was confined in State Police barracks prior to the time of his confession was held not to invalidate it in the absence of threats or compulsion: *Comwlth. v. Becker*, 326 Pa. 105; *Comwlth. v. Jones*, 297 Pa. 326; *Comwlth. v. James*, 294 Pa. 156. The confession of one accused of a crime is not af-

fected because interrogatories which have been put to him assume his guilt: *Comwlth. v. Spardute*, supra. In the case of *Comwlth. v. Jones*, 341 Pa. 541, the defendant was taken into custody for questioning on June 3, 1940. At first he denied any participation in the murder. On June 13 (ten days later), he stated that he wanted to get it over with; whereupon he made a statement to the police and later repeated this statement in a more detailed manner given to the District Attorney on June 17, 1946. This statement was reduced to writing and signed by the accused. The fact that the accused was in custody or under arrest at the time he made his statement to the police has never been accorded any significance in this State, although it has been given some weight in other jurisdictions. The question of the methods of criminal investigation of law enforcement officers has been raised on other occasions. In *Comwlth. v. Vallone*, 347 Pa. 419, 422, Mr. Justice Stern said:

> "The cases are abundant in which such evidence was received where the incriminating statement had been made in the presence of the accused *after* his arrest and while in custody; for example: *Comwlth. v. Aston*, 227 Pa. 112, 75 A. 1019; *Comwlth. v. Ballon*, 229 Pa. 323, 78 A. 831; *Comwlth. v. DePalma*, 268 Pa. 25, 110 A. 756; *Comwlth. v. Carelli*, 281 Pa. 602, 127 A. 305; *Comwlth. v. Rose*, 327 Pa. 220, 193 A. 17; *Comwlth. v. Turza*, 340 Pa. 128, 16 A. 2d 401; *Comwlth. v. Murphy*, 92 Pa. Superior Ct. 139.

In none of these cases, nor in *Comwlth. v. Weigand*, 134 Pa. Superior Ct. 603, 5 A. 2d 385, was the accused present voluntarily at the interview in which the accusatory statement was made, the meetings were quite as formal as in the present instance, and the persons who did the interrogating were law enforcement officers. If those who here participated can be said to have been 'hostile' there is no reason for assuming they were more so than the chief of police in *Comwlth. v. Aston*, 227 Pa. 112, 75 A. 1019, or the district attorney in *Comwlth. v. Rose*, 327 Pa. 220, 223, 193 A. 17, 18, and *Comwlth. v. Karmendi*, 328 Pa. 321, 335, 195 A. 62, 67, 68, or the chief of county detectives in *Comwlth. v. Petrillo*, 341 Pa. 209, 227, 228, 19 A. 2d 288, 297, or the police in *Comwlth. v. Beati & Burrell*, 86 Pa. Superior Ct. 139, or the detectives in *Comwlth. v. Weigand*, 134 Pa. Superior Ct. 603, 5 A. 2d 385.

*(In fairness it should be noted that several jurisdictions refuse to apply the rule after arrest has taken place. Pennsylvania, however, has consistently stood with those which do not recognize any distinction in that regard.)"

At the trial, the defendant repudiated his statement and admissions, asserting that they had been procured from him by fear and abuse; and that such statements were untrue. This confession (*Comwlth. v. Jones*, 341 Pa. 541) was admitted over objection

and was the basis for a motion for a new trial. Mr. Justice Patterson, on page 547, 548 and 549, stated:

> "It is urged that the written statements made and signed by appellant on June 7, 1940, and June 17, 1940, in each of which he states that it is made voluntarily and with knowledge that it may be used against him in court, should not have been admitted because he was being held in custody at the time and was denied the right to procure an attorney, because he was accused of lying and those having him in charge assumed his guilt during prolonged questionings, because of the application of a lie detector during the interrogations, and because the statements had been forced from him by physical abuse and torture. 'The mere fact that the defendant was under arrest, or was in the charge of armed police officers when he made his confession, will not make a confession involuntary': *Com. v. Spardute*, 278 Pa. 37, 47. See also *Com. v. James*, 294 Pa. 156, 161; *Com. v. Cavalier*, 284 Pa. 311, 315. Nor are the statements invalidated by reason of the fact that appellant was not represented by counsel, no request for such representation ever having been made: *Com. v. Spardute*, supra, 46. Similarly, the admissibility of the statements is not affected by the fact that in the interrogations appellant was accused of lying or because his guilt was assumed: *McClain v. Com.*, 110 Pa. 263, 269; *Com. v. Spardute*, supra, 48.

And, the application of a lie detector did not vitiate the statements. See *Com. v. Hipple*, 333 Pa. 33, wherein it is expressly held that an objection based on the fact that a confession was thus induced cannot be sustained, this Court pointing out, at page 39, that 'A confession procured by a trick or artifice, not calculated to produce an untruth, is never vitiated thereby'.

"While appellant testified that they were procured through fear and abuse inflicted upon him by those having him in custody, the witnesses to the statements testified that no force or coercion was used. 'Where, by the Commonwealth's witnesses, it is shown that a confession is made voluntarily, without such threat or inducement as might secure a false confession, it must be admitted. If afterwards the defendant testifies, or produces other witnesses who testify, that it was not voluntarily made, it becomes a question for the jury: *Com. v. Aston*, 227 Pa. 112, 115, 116; *Com. v. Shew*, 190 Pa. 23, 24; *Com. v. Epps*, 193 Pa. 512, 515; *Com. v. Van Horn*, 188 Pa. 143, 168; *Com. v. Shaffer*, 178 Pa. 409, 414; *Volkavitch v. Com.*, 9 Sadler 327; *Underhill on Criminal Evidence*, 2d ed., sec. 126, p. 242; *Com. v. Spardute*, supra, 48. The circumstances attending the making of appellant's statements were unquestionably for the jury's consideration under proper instructions by the court, which were given, as follows: 'Now, if you find, members of the jury, that he (appellant) was

coerced and compelled by reason of force and violence and threat or otherwise, intimidation of any kind, to make the statements, then they are not his voluntary statements and you should ignore them entirely and give them no consideration whatever. But if you find that he made these statements voluntarily as stated in the statements, then you will give them consideration and determine what is the real truth of the matter'. See *Com. v. Farrell*, 319 Pa. 441, 444."

There is nothing in the law that says questioning by the police deprives an accused of his constitutional rights. It was stated in *Lisenba v. California*, 314 U. S. 219, 238-241 and *Wan. v. U. S.*, 266 U. S. 1. 14, the mere questioning of a suspect while in the custody of police officers is not prohibited either as a matter of common law or due process. Even though this detention by the police prior to his confession may be regarded as an infringement on the rights of an individual, nevertheless, it must be realized that this defendant was later charged in an indictment for the crime of murder; that he was arraigned thereon and entered a plea of "not guilty". He therefore cannot now raise this question of improper arrest and detention as a reason for a new trial. In fact there are cases where the indictment was based upon insufficient information and the court in *Comwlth. v. Mallini*, 214 Pa. 50, 51, 52, stated:

"First, the insufficiency of the information. The county detective officer appeared before a

justice of the peace, and, 'being duly sworn, deposes and says that * * * Giovanni Mallini did kill and murder Antonio Rippe by stabbing him in the body with a knife. On information received.' At the trial a motion was made to quash the indictment for the insufficiency of the information. It was too late. The indictment was regularly found after a hearing before the justice, and such finding 'cannot be invalidated for any such reason': Com. v. Brennan, 193 Pa. 567."

In addition, it was said in the case of *Comwlth. v. Petrillo*, 340 Pa. 33, 43:

> "Trial by jury" is an institution whose form in capital cases *no individual* can change, any more than he can change the form of government. But a defendant in *any* criminal case *can* waive some of his privileges of citizenship. These waivers by a defendant even in a capital case will not invalidate the trial, provided the essential features of trial by jury are undisturbed."

The primary reason for a new trial is based upon the assumption that the statement made by the defendant was not a free and voluntary one, and was therefore improperly admitted in evidence. The defense has presented in argument several opinions of the United States Supreme Court, to support their contention. With the law as set forth in the United States Supreme Court opinions, we must agree; but

it will be observed by a reading of the cases submitted, that on the face of each record, there are acts shown which are wholly consistent with the fact that the will of the accused was broken and that he was by fear of violence, by threats or trickery, forced to make the confession. In the case of *Chambers v. Florida*, 309 U. S. 227, 240, Mr. Justice Black stated:

> "The rejection of petitioner Woodward's first 'confession,' given in the early hours of Sunday morning, because it was found wanting, demonstrates the relentless tenacity which 'broke' petitioners' will and rendered them helpless to resist their accusers further."

If this were so in the case at bar, there would be no question involved, but in our case, the defendant is not a poor negro of a low degree of intelligence. From an observation of him and listening to his testimony, it is apparent that he is a smart, clever individual. It is apparent that his confession was not concocted by others, and it is clear that it is not a fabrication created by another mind or minds. The statement as given by the defendant is logical and only consistent with his guilt and that of his confederates. It shows that the defendant had this broom factory under observation two days before the murders and that he and his confederates went to the factory on that Saturday afternoon after the close of the business day, for the purpose of robbery. The defendant admits that he was armed with a heavy sash weight and with this lethal weapon,

accompanied by Johnson, he went into the broom factory, leaving Lofton outside on the pavement to be the lookout. The statement of the defendant shows that when he and Johnson entered the broom factory, they met Frank Endres, an employee of the factory, inside of the doorway, and that the defendant struck Endres over the head with the sash weight, crushing his skull. The noise attracted the attention of Simmons, the owner of the factory, who came from his office. As he did so, the defendant struck him over the head with a sash weight, crushing his skull. The defendant then went through the pockets of Simmons, while Johnson went through the pockets of Endres; and each abstracted wallets from them containing considerable sums of money. The confession of the defendant and the confessions of his confederates stated what each gave to the other in the way of cash after they had fled from the scene of their crimes. The confession of the defendant shows that in going out Callowhill Street, he threw the sash weight away; that the three confederates then went to saloons where they had some drinks, and that they then parted, promising each other that they would say nothing about the crime. A reading of the confession shows that the defendant was asked whether he had been threatened or harmed and whether he had been promised anything, and it also contains the caution that anything he might say, might be used against him. The defendant was asked if he knew, when he was arrested, what the charge was and he said, "Yes, sir, for the

murdering of those two men in the broom factory." When the statement was read to him, he was asked if he could read and write, and he said he could "read pretty good." He then signed his confession. It is this confession which the defendant attempts to repudiate and which he contends was forced from him by beatings, threats and intimidation. The police officers, and there are a number involved in this case, all testified that there was no evidence of any beating, and each one when interrogated testified that neither he nor any other officer in his presence had struck or ill used or threatened the defendant.

The voluntary or involuntary character of a confession is determined by a conclusion as to whether the accused, at the time he confesses, is in possession of mental freedom to confess to or deny a suspected participation in a crime: *Ashcraft v. Tenn.*, 322 U. S. 143; *Hysler v. Florida*, 315 U. S. 411, 413; *Lyons v. Oklahoma*, 322 U. S. 596, 602. It has been held that where there is a dispute as to whether the acts charged to be coercive, actually occurred or where different inferences may fairly be drawn from the admitted facts, the trial judge and the jury are not only in a better position to appraise the truth or falsity of the defendant's assertions from the demeanor of the witnesses, but the legal duty is upon them to make this decision: *Lisenba v. California*, 314 U. S. 219, 238; *Lyons v. Oklahoma*, 322 U. S. 596, 602; *Underhill on Criminal Evidence*, 2d Ed. Sec. 126, p. 242. In *Comwlth. v. Spardute*, supra, it was stated that where by the Commonwealth's witnesses

it is shown that a confession is made voluntarily, without such threat or inducement as might secure a false confession, it must be admitted. If afterwards the defendant testifies or produces other witnesses who testify that it was not voluntary, then it becomes a question for the jury.

The court and jury had the opportunity of observing the defendant and the various police officers involved. The court, in a comprehensive charge, left it to the jury to determine whether in fact the confession was free and voluntary, or whether it had been procured by fear, intimidation and duress. The court informed the jury that if they found that the confession was involuntary, that it should be disregarded. The jury after a proper consideration of all of the evidence, showed by its verdict that it believed that the confession was a voluntary and free confession, and that it was not induced by fear, intimidation, threats or duress. This court believes that the action of the jury in so finding, was justified. We believe that the case of *Comwlth. v. Jones*, 341 Pa. 541, is closer to the case at bar, than any other case we can find in searching through the records, and we believe that this case controls and answers the question here raised by the defendant in his motion for a new trial.

The second contention of the defendant is based upon the fact that the confessions of the confederates, Johnson and Lofton, were admitted in evidence in the case against the defendant. The defendant contends that this was error. With this contention

we do not agree. Not only did the defendant give and sign his own confession when it was reduced to writing, but in his presence his two confederates, Johnson and Lofton, also gave their voluntary statements to the police which were reduced to writing and then signed by them. Then in the presence of each other, the defendant signed the confessions as given by his confederates and they also signed their own confessions and the defendant's confession. It cannot be conceived that this defendant could have in any way given his assent to the joint confession of his accomplices or confederates in any stronger way than he did. It has been held in numerous cases that a joint confession of an accomplice is admissible in evidence if the defendant assented to its truth. In the case of *Comwlth v. Oreszak*, 328 Pa. 65, 68, 69, 70, Mr. Chief Justice Kephart said:

> "Joint confessions are not new in the law of evidence; to be admissible they must be the free and voluntary expressions of the persons taking part therein concerning the commission of a crime in which they are culpable. If the confession is in writing, it must appear that the accused has had full knowledge of its contents, assented to its truth, or adopted the statement as his own freely and voluntarily. If he is absent when the statement or a portion of it is made, it nevertheless becomes his statement if, knowing its contents, he voluntarily assents to it. * * * In the *Rose* case, we said at p. 223: 'Appellant

mistakes the purpose of the offer of this statement by the Commonwealth. It was not introduced as the testimony of his accomplices, thereby depriving him of the right of cross-examination, but it was offered as a confession by him in so far as he admitted the facts stated in his presence by the other participants in the crime, and explained his part in its perpetration.' * * * Their statements as to acts done, which were admitted by him to be true, he adopted as his statement as though he had uttered them."

In *Comwlth. v. Rose*, 327 Pa. 220, 223, Mr. Chief Justice Stern said:

"Written statements in connection with the crime made by a defendant are always admissible in evidence: *Comwlth. v. Insano*, 268 Pa. 1. Appellant mistakes the purpose of the offer of this statement by the Commonwealth. It was not introduced as the testimony of his accomplices, thereby depriving him of the right of cross-examination, but it was offered as a confession by him in so far as he admitted the facts stated in his presence by the other participants in the crime, and explained his part in its perpetration. See *Comwlth. v. Carelli*, 281 Pa. 602; *Comwlth. v. Spardute*, 278 Pa. 37; *Comwlth. v. Ballon*, 229 Pa. 323; *Comwlth. v. Lawrence*, 282 Pa. 128."

For the reason suggested, a new trial cannot be granted.

The defendant furthermore contends that he was deprived of his constitutional right in not being furnished with counsel. The defendant testified that during the time he was examined, he asked for counsel and that same was refused him. The police officers testified that the defendant did not ask for counsel. The verdict of the jury shows that they believed the testimony of the police officers and as we have before stated, they had an opportunity of observing this defendant and the police officers and weighing their testimony. This defendant is not the poor, moronic type of negro similar to those accused in some other cases. He is a clever, knowing criminal.

The same question arose in the case of Comwlth. v. Spardute, 278 Pa. 37, 46, where the defendant testified that he made a request for counsel and it had been denied him. The court stated that it would have been a grave infraction of his rights if this were so, but that this testimony was denied by the police that any such request was made, and the Supreme Court in that case, acted upon the assumption that the verdict of the jury was justified and the evidence of the police was true.

It is clear from a reading of the cases that the right of an accused for the appointment of counsel under the common law did not exist, and that right in this jurisdiction did not exist until by Statute and constitutional provisions it was specifically created. In this Commonwealth by the Act of May 31, 1718, 1 Sm. L. 105, Sec. 4, it was provided "that learned

counsel be assigned to the prisoners" * * *"upon all trials of capital crimes." Then the Act of March 22, 1907, P. L. 31, Section 1, 19 Purdon, P. S. Sec. 784, provided for the compensation of such assigned counsel. There is nothing in the Constitution or the Acts of Assembly of this Commonwealth which indicate that an accused has a right to have counsel appointed upon being taken into custody. The law provides that he shall have the right of counsel to represent him at trial. In the case of *Comwlth. ex rel Shaw v. Smith,* 147 Pa. Superior Ct. 423, Keller, P. J. (on page 432) said:

> "We respectfully submit that the word, defense, as used in the phrase in the Sixth Amendment to the Federal Constitution, 'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial * * * and to have the Assistance of Counsel for his defense,' contemplates defense at a speedy and public *trial;* and Mr. Justice Black has said, 'The very word "trial" connotes decisions on the evidence and argument properly advanced in open court.'"

If we may assume by the finding of the jury that the defendant did not request counsel, we then consider what efforts, if any, the defendant made to secure counsel himself. The evidence shows that Mazy Eva Brown, a friend of the defendant, was aware of the fact that the defendant while in cus-

tody was without counsel, and that she made an effort to employ an attorney for him. She testified that the day he was arrested, she learned of his arrest; that she went to the police station to find him; that she did not get a lawyer for him because he was financially embarrassed but that she herself went to see a lawyer and did not employ him because he wanted a thousand dollars, $500.00 down and $500.00 at the time of the trial to represent the defendant. She testified that she then went to the Legal Aid Society and got no help there because they informed her they did not handle criminal cases. She also testified that she went to the National Association for the Advancement of Colored People. When it became apparent by reason of a petition filed with the Clerk of Quarter Session that the defendant was destitute and was asking for legal aid, the Quarter Sessions Court appointed his present counsel who prepared his case and represented him at his trial.

We do not therefore believe that absence of counsel before trial is sufficient for granting a new trial, or that the defendant has in any way been deprived of any fundamental right granted him by the Constitution of Pennsylvania and the Constitution of the United States.

The defense further suggests that a new trial should be granted because the defendant was interrogated at his hearing before the magistrate. A reading of the notes of testimony would indicate that immediately prior to the hearing, the defendant had confessed. When he appeared before the magistrate

with his confederates, Johnson and Lofton, the Assistant District Attorney in charge stated to them: "Do any of you men want to say anything this morning? I want to warn you in advance that anything you say may be used against you in court, and that you don't have to say anything if you don't want to. I understand, however, that you have made statements to the officers and signed those statements." He then turned to Jasper Johnson and said, "You have made a statement to the officers." At that time Johnson gave a complete statement in answer to several questions put to him regarding his participation in the crime, which was generally about the same as the statement given to the police. Lofton then was sworn and again warned, and he corroborated the words that are contained in the testimony of Johnson. The defendant was warned after having been sworn, and at first stated that he did not want to say anything. After statements of Johnson and Lofton had been made, the magistrate asked the defendant, "Can you add anything?" and he at first said, "No sir." At that time he was entitled to his constitutional right of remaining silent if he so desired. He merely stated that he did not desire to add anything to the statements of his confederates. This time he was asked again, "Do you agree with the testimony that these two men have given in court?" His answer was, "Yes sir." He was questioned, "You corroborate their testimony?" and his answer was "Yes sir"; "Do you say that it is true?" "Yes sir;"

"You are not denying anything that they said?" "No sir."

If the defendant had refused to answer and had remained silent, he was well within his constitutional rights. At no time during the taking of the testimony before the magistrate did he take that position. He merely stated that he could not add anything, and later stated that what had been said was true.

In the case of *Comwlth. v. Clark*, 130 Pa. 641, Mr. Chief Justice Paxson (on p. 651) stated:

> "The fact must not be overlooked that a defendant in a homicide case may now take the stand, and be sworn as a witness on his own behalf. There would seem to be no good reason why he may not of his own motion go before a magistrate, and make a voluntary statement under oath. It is quite a different matter where the oath is administered against his will."

Another reason advanced by the defense for a new trial is that the court permitted evidence to be introduced showing that the defendant and his confederates, after they had confessed to the crimes, were taken to the scene of the crime where Johnson and Lofton re-enacted the crime itself. In the presence of the defendant, they explained to the police how the crime occurred, and the part taken by each. Notwithstanding the fact that the defendant had already confessed, when asked if he had anything to

say at the scene of the crime, he stated that he had nothing to say. It seems that under a charge as serious as this one, that that was the time for the defendant to speak up if he had anything to say. In the case of *Comwlth. v. Karmendi*, 325 Pa. 63, 67, Mr. Justice Drew said:

> "Thus failure to deny when accused of crime, not at a judicial proceeding, is evidence against the accused; Ettiger v. Comwlth., 98 Pa. 338; Comwlth. v. Aston, 227 Pa. 112; Com. v. Detweiler, 229 Pa. 304; Com. v. DePalma, 268 Pa. 25; Com. v. Lisowski, 274 Pa. 22. So also, after he has waived his privilege, is accused's refusal to testify in his own behalf at an earlier stage of the proceedings against him; Com. v. Smith, 270 Pa. 583; Raffel v. U. C., 271 U. S. 494."

The very fact that the defendant at that time merely stated that he had nothing to say, must be concluded that this was not a denial. Standing mute under such an accusation at that time is an acquiescence in the verity of his confederates' statements. This seems to be the law of this Commonwealth. The burden is on the defendant when the statements were made in his presence not to stand mute, but to deny them if they were untrue.

It is further contended by the defendant that the action of the police officers in bringing him from the County Prison to the Police Department for the purpose of further questioning after he had been com-

mitted thereto by a magistrate, is a reason for a new trial. This defendant at a time when he was represented by counsel, before he was arraigned in court, and at or before he was brought to trial, could have raised the questions of any irregularities in the conduct of the police officers. The defendant, however, failed to do so. He entered his plea of "not guilty" and went to trial on the murders. It is now a late time to raise this question unless it can be done in an effort to show that the confession was involuntary. We do not condone the practice of the police of taking a prisoner out of prison for the purpose of further testimony, yet we do not believe in this case, that it is such a substantial error as to justify the granting of a new trial. Generally one who is accused of crime cannot be taken from prison to which he has been committed by a magistrate for the purpose of further interrogation by the police, the district attorney, or any one having a semblance of authority over him. In most cases, one who is accused of a crime is brought from the prison by a writ of habeas corpus or on an order to bring the defendant before the court for trial. It is well known that these safeguards are thrown about an accused because of the presumption of innocence which exists for every untried prisoner. This course of conduct also prevails in order to prevent any undue indignities caused to be suffered by a prisoner. If this court was convinced that the action of the police was done against the will of the defendant and to coerce him into an involuntary statement, we would

condemn it as illegal, but in this case, there is no evidence which indicates that the action of the police was against the will of the defendant. The defendant while on the stand before the trial judge, made no such assertion. Neither did the testimony of the police officers indicate that this was so. The defendant had made a free, full and detailed confession of his participation in the murders. It is evident that insofar as this defendant was concerned, he was not on the grill. There is no evidence that he was being coerced to make any additional statement. There is nothing in this case which shows that the defendant's legal rights were imperiled by this additional examination; there is no evidence which shows that his confession was amended or altered, as the result of this action, or that the evidence of such examination by the police in any way swayed or affected the verdict of the jury. For that reason we do not believe that this, if it be an error, is a reason for a new trial.

After a study of the very excellent brief in argument as submitted by counsel for the defendant, we are nevertheless of the opinion that there are no substantial errors in the trial in this case. The charge of the trial court is convincing that this defendant assaulted and murdered two men, and that he is a menace to society. We believe that he was given a fair trial which in itself is due process. While we believe that every safeguard should be thrown about a man accused of a capital offense, nevertheless, the courts owe a responsibility to society to safeguard it

from the men of the type and character of this defendant.

ORDER.

AND NOW, to wit, this 11 day of February, 1947, the defendant's Motion for a New Trial is refused, and the sentence as found by the jury, is imposed.

By the Court:

(Sgd.) FRANK SMITH,

J.

(Sgd.) HARRY S. McDEVITT,

J.

DISCUSSION.

Philadelphia, Pa., March 11, 1947.

BEFORE: HON. FRANK SMITH, P. J.

PRESENT:

COLBERT C. McCLAIN, Esq., Assistant District Attorney, for the Commonwealth.

EDWIN P. ROME, Esq., for the Defendant.

THE COURT: Aaron Turner, your application for motion for a new trial has been dismissed. Before I now impose sentence do you have anything to say as to why judgment should not be imposed upon you?

THE DEFENDANT: Yes, sir. I was convicted of this charge and I said I did not know anything about it and that is all I want to say.

THE COURT: I will now impose sentence.

JUDGMENT AND SENTENCE.

The Commonwealth of Pennsylvania versus Aaron Turner, June Term 1946, No. 646, charge of murder.

And now, this eleventh day of March, 1947, the sentence of the law is that you, Aaron Turner, be taken hence by the Sheriff of Philadelphia County to the jail of that County from whence you came, and from thence in due course to the Western Penitentiary in Center County, Pennsylvania, and that you there suffer death during the week fixed by the Governor of the Commonwealth, in a building erected for that purpose on land owned by the Commonwealth, such punishment being inflicted by either the Warden or Deputy Warden of the Western

Penitentiary or by such person as the Warden shall designate, by causing to pass through your body a current of electricity of intensity sufficient to cause death and the application of such current to be continued until your are dead.

FRANK SMITH,
J.

I hereby certify that the proceedings, evidence and charge are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this is a correct transcript of same.

WALTER A. CRANCH,
Official Stenographer.

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

FRANK SMITH,
President Judge.

[fol. 293] IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT, January Term, 1947

No. 136

COMMONWEALTH OF PENNSYLVANIA

vs.

AARON TURNER, Appellant

Supplemental Record

APPEAL FROM THE JUDGMENT AND SENTENCE OF THE COURT OF QUARTER SESSIONS FOR THE COUNTY OF PHILADELPHIA, AS OF JUNE SESSIONS, 1946, No. 646.

[fol. 294] DISSENTING OPINION

SLOANE, J., November 7th, 1947:

The jury found defendant guilty of murder in the first degree, and fixed the ultimate sanction, death. The motion for a new trial was before Judge McDevitt, Judge Smith, and myself. My colleagues agreed upon a refusal; I dissented.

I should think the admitted circumstances present the problem, and the answer.

Two men were murdered, brutally, in December 1945. No clue was found that led to particular persons; six months later, in June 1946, defendant Turner and his alleged accomplices, Johnson and Lofton, and a number of others, were picked up on the street, without warrants, in a "police drag-net." Defendant and Johnson were held for five days, and Lofton for fifteen days, before the magistrate's hearing; defendant was held for four days thereafter.† Defendant, a southern negro of little education, was held incommunicado, helpless to call upon friend or counsel, and under constant questioning by police, singly and in groups, both in the daytime and in the evenings. At some time during this period defendant was taken from the Philadelphia City [fol. 295] Hall, where the others were detained, to a police station house at Fifteenth Street and Snyder Avenue, in South Philadelphia, and brought back again "maybe a day"

† See Com. v. Brines, 29 Dist. Rep. 1091.

later. He was never told of his right to counsel, or warned of his right to refuse to testify against himself until the fifth night of his custody. On the sixth day, without benefit of counsel or advice of friend, he was arraigned and sworn before a magistrate, and by means of continued questioning by the Assistant District Attorney, and in the presence of his police questioners, was induced to give testimony against himself despite his expressed desire and attempt to claim his constitutional privilege.

Written "confessions" were finally obtained from each of the accused, each one also signing that of the others (Lofton used a mark; he cannot read or write). These statements were completed either immediately before or some time after the hearing. Testimony of the officers as to the time of the making of the statement by defendant and the conditions under which it was taken are, as is usual in such cases, not only vague and uncertain, but at times conflicting. These are the undisputed facts. Furthermore, if defendant's story is believed, his confession was sweated out by cruel and brutal "work" on the part of the police.

It is also well to note that the only evidence connecting defendant with the commission of the crime charged is his "confession" and those of his alleged accomplices, as evidenced by the signed statements of all three; and second, by the recitation by police witnesses at the trial of the testi- [fol. 296] mony of Johnson and Lofton at the magistrate's hearing and their conduct at the reenactment of the crime, which was received in evidence by the court as an admission of defendant implied from his silence at that time. There was no corroborative evidence presented at the trial, either circumstantial or otherwise.

Under the circumstances, it seems to me that defendant was not convicted in accord to law. Defendant, bad as he might be, is "entitled of common right to a fair trial on legal evidence and with correct instructions": Black, J., in Lincoln v. Wright, 23 Pa. 76, 80.[1] "'Abhorrence, however

[1] In People v. Marwig, 227 N. Y. 382, 389: "The law, however, as has frequently been stated, makes no distinction in persons and the worst of men when brought to its bar are to be tried according to uniform and established rules and practice. No departure from these can be said to be harmless because of the seriousness or gravity of the offense

great, of persistent and menacing crime will not excuse transgression in the courts of the legal rights of the worst offenders'": quoted by Chief Justice Hughes at proceedings in memory of Mr. Justice Butler, in 310 U. S. xix.[2] What I say simply is that defendant's legal rights were transgressed. To say that defendant's volition as to the confession was passed upon by the jury under the trial judge's instructions is to pass the point. The question of a free and voluntary confession is for the jury in our state. [fol. 297] Commonwealth v. Jones, 341 Pa. 541, 548-9. That is certainly so. But where it is plain from a reading of the record that there was no free and voluntary confession we ought to say so as a matter of law,—Lyons v. Oklahoma, 322 U. S. 596, 602—, leaving to the jury as the final arbiter a confession which is not "so fundamentally unfair, so contrary to the common concept of ordered liberty, as to amount to a taking of life without due process of law": Roberts, J., in Lisenba v. California, 314 U. S. 219, 238. Where the record shows with easy recognition the dominant facts of long confinement under continual and repeated questioning, without advice of friend or counsel, and without formal commitment, we may well consider a determined no to a confession under these circumstances. Such a confession should be worthy of but one interpretation—inadmissibility.

I think the case comes within the purview of Brown v. Mississippi, 297 U. S. 278; Chambers v. Florida, 309 U. S. 227; White v. Texas, 310 U. S. 530; Ward v. Texas, 316 U. S. 547; McNabb v. United States, 318 U. S. 332; Anderson v. United States, 318 U. S. 350; Malinski v. New York, 324 U. S. 401. On the score of the need for opportunity to the police to investigate, interrogate, and ferret out crime, much has been said which I need not repeat. See, e.g., Chambers v. Florida, 309 U. S. 227, 240-1. See also Keedy, The Third Degree and Legal Interrogation of Suspects, in 85 University of Pennsylvania Law Review 761; Kauper, Judicial

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or the apparent guilt of the accused." See also People v. Mummiani, 258 N. Y. 394, and the dissent of Lehman, J., in People v. Doran, 246 N. Y. 409, 436-7.

[2] The quotation is from the opinion of Mr. Justice Butler, then a Circuit Court judge, in United States v. Motlow, 10 F. 2d 657, 662 (C. C. A. 7th).

Examination of the Accused—A Remedy for the Third De-
[fol. 298] gree, 30 Michigan Law Review 1224. I take it that evil is not only suspect but unnecessary, and that the time has come when the third degree, or any of its euphemistic alternatives, is branded the evil that it is.

(S.) Sloane, Judge.

[fol. 299] In Supreme Court of Pennsylvania

Docket Entries

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Colbert C. McClain, Asst. District Atty.
Edwin P. Rome, C. B. Palmer.

Commonwealth of Pennsylvania, Plaintiff,

vs.

Aaron Turner, alias "Treetop", Defendant

Appeal of Defendant No. 646 June Term, 1946, from the judgment & sentence.

Capital Case

Appeal from Court Oyer & Terminer of the County of Philadelphia. Filed April 23, 1947. Eo die Certiorari exit Retble. first Monday June, 1947. Retble. for argument fifth Monday September, 1947 in Pittsburgh.

May 2, 1947, Record returned & Filed. October 24, 1947. Assignments of Error filed.

April 23, 1947. Certificate of Appeal and Affidavit exit and sent to Hon. James H. Duff, Governor of Pennsylvania, Harrisburg, Pennsylvania.

April 23, 1947. The above appeal is placed on the Special List and transferred to Pittsburgh for argument week beginning Monday, September 29, 1947, as provided by Rules 66, 67 and 74.

Eo die Certificate exit and sent to: Supreme Court, Pittsburgh.

August 4, 1947. Petition for continuance to the November, 1947 Sessions filed. C. B. Palmer, Edwin P. Rome (Joined in by the District Attorney).

August 5, 1947. The within named appeal is continued until November 24th at Philadelphia. Maxey, C. J.

[fol. 299a] August 6, 1947. Notice exit and sent to: Supreme Court, Pittsburgh,

November 24, 1947. Argued.

March 23, 1948. All the assignments of error are overruled, the judgment is affirmed and the record is remitted to the court below so that the sentence duly imposed may be carried out. Opinion by Maxey, C. J. (Mr. Justice Jones concurs in the judgment.)

March 24, 1948. Certificate of judgment exit and sent to: Hon. James H. Duff, Governor of Pennsylvania.

April 3, 1948. Remittitur exit and with record sent to: Clerk, Oyer & Terminer, Court, Philadelphia County.

April 3, 1948. Acknowledgment of record, etc., received and filed.

June 4, 1948. Praecipe for certification of record for the United States Supreme Court, filed. Edwin P. Rome.

[fol. 300] In Supreme Court of Pennsylvania

Statement of Questions Involved

1. Is it a violation of the 14th Amendment of the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution to admit in evidence confessions obtained after the accused had admittedly been held by the police for five days without a preliminary hearing, questioned intensively for hours at a time day and night, and was without assistance of counsel, relatives or friends? (Negatived.)

2. Did the learned trial Judge err in admitting testimony of absent witnesses given at a preliminary hearing before a magistrate when defendant was not represented by counsel and was not informed of his right to cross-examine? (Negatived.)

3. Is it a violation of the 14th Amendment of the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution to admit in evidence statements elicited from defendant at a preliminary hearing before a magistrate although defendant was at that time without counsel and had claimed his constitutional privilege against self-incrimination? (Negatived.)

4. Is it a violation of the 14th Amendment of the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution to admit evidence of a purported reenactment of the crime staged without a court order after the accused had been committed without bail but was,

despite the commitment, still being held illegally by the police without assistance of counsel, relatives or friends? (Negatived.)

[fol. 301] IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed October 24, 1947

And now, to wit, this 24th day of October 1947, comes the defendant Aaron Turner, by his attorneys, Edwin P. Rome, Esquire, and C. Budd Palmer, Esquire, and files the following assignments of error in the above captioned case:

1. The learned trial Judge erred in overruling defendant's objection to the reading in evidence by the Commonwealth's witness, Daniel O'Mahoney, of a purported statement or confession made by defendant, the record with reference thereto being bracketed at pages 34a to 40a in accordance with Rule 36.

2. The learned trial Judge erred in overruling defendant's objection to the reading in evidence by the Commonwealth's witness, Daniel O'Mahoney, of a purported statement or confession made by an alleged accomplice, Jasper Johnson, the record with reference thereto being bracketed at pages 42a to 47a in accordance with Rule 36.

3. The learned trial Judge erred in overruling defendant's objection to the reading in evidence by the Commonwealth's witness, Daniel O'Mahoney, of a purported statement or confession made by an alleged accomplice, Clarence Lofton, the record with reference thereto being bracketed at pages 47a to 51a in accordance with Rule 36.

[fol. 302] 4. The learned trial Judge erred in overruling defendant's objection to the line of questioning put to the Commonwealth's witness, Daniel O'Mahoney, whereby there was read into the record testimony given at the magistrate's hearing by an alleged accomplice, Clarence Lofton, the record with reference thereto being as follows (56a-57a):

> "Did you hear this question asked by (hic) Clarence Lofton in the presence of Aaron Turner among other questions? 'Were you there when these events happened?'
>
> A. Yes, sir.

Q. Did you hear Clarence Lofton make this answer: 'Yes, sir. He just about covered everything. I was there, and was standing outside watching.' Did you hear him say that in Turner's presence?

A. Yes, sir.

Q. Did you hear this question asked: 'Q. You corroborate what he has said?' Lofton then said in the presence of Turner 'That is right.'

A. Yes, sir.''

(110a):

"Mr. Rome: I ask for an exception to the admission in evidence of the Magistrate's testimony read to the witnesses, Lieutenant Kelly, Sergeant Riccardi and Detective O'Mahoney: also as to anything relating to the Magistrate's testimony: Also I ask for an exception to the reading into the evidence of the confessions; also exception to the admission of testimony relating to the reenactment of the crime.

The Court: Exceptions may be noted as requested."

[fol. 303] 5. The learned trial Judge erred in overruling defendant's objection to the question put to the Commonwealth's witness Daniel O'Mahoney whereby there was read into the record testimony given at the magistrate's hearing by defendant and his alleged accomplices, Clarence Lofton and Jasper Johnson, the record with reference thereto being bracketed at pages 57a to 60a in accordance with Rule 36. Exception thereto is also noted at 110a.

6. The learned trial Judge erred in overruling defendant's objection to the question put to the Commonwealth's witness, Lieutenant Kelly, whereby there was read into the record testimony given at the magistrate's hearing by defendant's alleged accomplice, Jasper Johnson, the record with reference thereto being bracketed at pages 78a to 82a in accordance with Rule 36. Exception thereto is also noted at 110a.

7. The learned trial Judge erred in overruling defendant's objection to the question put to the Commonwealth's witness, Lieutenant Kelly, whereby there was read into the record testimony given at the magistrate's hearing by defendant's alleged accomplice, Clarence Lofton, the record with reference thereto being as follows (81a-83a):

"Q. Did you hear the district attorney ask Mr. Lofton these questions:

Mr. Rome: I renew my objection as to this testimony also, your Honor.

[fol. 304] The Court: I will overrule your objection and grant you an exception.

By Mr. McClain:

Q. Did you hear these questions asked of Mr. Lofton:

" 'Q. You have been told that anything you say may be used against you, and that you don't have to speak unless you want to. However, I am going to give you the opportunity of speaking if you want to. You have just heard the story of Jasper Johnson. Anything you can add to that?

A. No, sir. I haven't anything to add to it.

Q. Were you there when these events happened?

A. Yes, sir. He just about covers everything. I was there and was standing outside watching.

Q. You corroborate what he said?

A. That's right.'

—. Did you hear those questions asked in the presence of this defendant?

A. I did, sir."

8. The learned trial Judge erred in overruling defendant's objection to the question put to the Commonwealth's witness, Lieutenant Kelly, whereby there was read into the record testimony given at the magistrate's hearing by defendant, Aaron Turner, the record with reference thereto being bracketed at pages 83a to 85a in accordance with Rule 36.

[fol. 305] 9. The learned trial Judge erred in overruling defendant's objection to the question put to the Commonwealth's witness, Lieutenant Kelly, whereby there was read into the record testimony given at the magistrate's hearing by defendant's alleged accomplice, Clarence Lofton, the record with reference thereto being bracketed at pages 85a to 86a in accordance with Rule 36.

10. The learned trial Judge erred in admitting the testimony of the Commonwealth's witness, Samuel Riccardi, concerning a purported re-enactment of the crime charged,

the record with reference thereto being bracketed at pages 94a to 96a in accordance with Rule 36. Exception thereto is also noted at 110a.

11. The learned trial Judge erred in admitting the testimony of the Commonwealth's witness, Charles E. Moore, concerning a purported re-enactment of the crime charged, the record with reference thereto being bracketed at pages 99a to 101a in accordance with Rule 36. Exception thereto is noted at 110a.

12. The learned trial Judge erred in admitting the testimony of the Commonwealth's witness, Julia A. Simmons, concerning a purported re-enactment of the crime charged, the record with reference thereto being bracketed at pages 103a to 104a in accordance with Rule 36. Exception thereto is noted at 110a.

13. The learned trial Judge erred in charging the jury concerning the right of a person arrested in connection [fol. 306] with a crime to a prompt preliminary hearing, that portion of the charge and the exception thereto being as follows (199a-200a):

> "* * * The law is common sense, and we must regard these things in a sensible manner. You do not send them to the magistrate before you have sufficient information to hold an alleged culprit for the Grand Jury. There must be prima facia evidence before the police can take them."

(204a):

> "Mr. Rome: I ask for an exception to that portion of your Honor's charge where you state that the police do not have to rush a defendant to the magistrate before they have a prima facia case. According to the statutes, it is necessary to bring a person arrested before the magistrate——
>
> The Court: That is right,—it does not say when, and they did bring him before the magistrate.
>
> Mr. Rome: I think the cases require that it be done forthwith, which would not be to bring him in five days later.
>
> The Court: You do not presume to think if they were wrong in delaying the hearing four or five days that

it would affect the question of whether he is or is not guilty?

(Exception to defendant.)"

14. The learned trial Judge erred in charging the jury concerning defendant's right to counsel, that portion of [fol. 307] the charge and the exception thereto being as follows (200a):

"* * * Much has been said about the fact that the defendant did not have a lawyer. The Police Department does not suggest a lawyer. If he asks for a lawyer, the Police Department will get him in touch with a lawyer. From the evidence, I understand he could not hire a lawyer. His fiancee knew he was arrested, and she tried to get him a lawyer, but the lawyer wanted so much money he could not pay him. He has since had a lawyer—these two gentlemen appointed by the court—to represent him. If he had asked for a lawyer, it was the duty of the police to see that he had the lawyer; but the police testified he never asked for one."

(204a-205a):

"Mr. Rome: I ask for an exception to that portion of your Honor's charge where you say the police do not have to recommend a lawyer.

The Court: I think I have covered that fairly with you.

(Exception to the defendant.)

Mr. Rome: Under the cases, a man has the right to counsel in every proceeding against him.

The Court: I said that very thing—he has the right to get in touch with a lawyer.

Mr. Rome: In a capital case, the Commonwealth has the duty of providing counsel.

The Court: They did. I don't know when you were appointed—I have no idea.

[fol. 308] Mr. Rome: I was appointed after the magistrate's hearing. I submit he should have a lawyer for every phase of the proceeding, which includes the magistrate's hearing.

(Exception to defendant.)"

15. The learned trial Judge erred in refusing defendant's first point for charge, the point (208a), ruling thereon (203a), and exception (203a), being as follows:

"1. Under all the evidence in this case your verdict must be in favor of the defendant."

"I refuse all of the defendant's points."

"(Exception to defendant to refusal of points for charge.)"

16. The learned trial Judge erred in refusing defendant's second point for charge, the point (208a), the ruling thereon (203a) and exception (203a) being as follows:

"2. There is no competent and admissible evidence in favor of the Commonwealth."

"I refuse all of the defendant's points."

"(Exception to defendant to refusal of points for charge.)"

17. The learned trial Judge erred in refusing defendant's third point for charge, the point (208a), ruling thereon (203a), and exception (203a) being as follows:

[fol. 309] "3. The only evidence which purports to connect the defendant with the alleged murder of Frank Endres in his alleged voluntary confession which has been offered and read in evidence in this case. The said alleged voluntary confession discloses on its fact that it was taken between the hours of 9 a. m. and noon on June 8, 1946. In the absence of other evidence more specifically designating the time on the said day on which the said alleged confession was made and signed by the defendant, and inasmuch as the evidence in this case discloses that during the said period, before the taking and the signing were completed, the defendant was given a hearing before a magistrate at which time he exercised and declared his desire to exercise his constitutional right to remain silent and not to give evidence against himself, and inasmuch as notwithstanding his said declaration and intent he was unlawfully and unconstitutionally interrogated by the District Attorney, intimidated and forced to make replies in violation of his constitutional rights in the premises, and was thereafter further

interrogated by the representatives of the law, the procuring of his signature to his acknowledgment of the said confession was arbitrary, coercive and in violation of his constitutional rights, and therefore you must disregard entirely the said alleged confession and everything contained therein.''

''I refuse all of the defendant's points.''

[fol. 310] ''(Exception to defendant to refusal of points for charge.)''

18. The learned trial Judge erred in refusing defendant's fourth point for charge, the point (209a), ruling thereon (203a), and exception (203a), being as follows:

''4. Inasmuch as defendant at the magistrate's hearing exercised and declared his desire to exercise his constitutional right to remain silent and not to give evidence against himself, you must disregard entirely and dismiss from your mind all evidence given by him thereafter in response to the District Attorney's improper and unconstitutional interrogation.''

''I refuse all of the defendant's points.''

''(Exception to defendant to refusal of points for charge.)''

19. The learned trial Judge erred in refusing defendant's fifth point for charge, the point (210a), ruling thereon (203a), and exception (203a), being as follows:

''5. In considering the evidence in this case, it is your duty to disregard and to dismiss entirely from your minds anything contained in the alleged confessions of Jasper Johnson and Clarence Lofton, the so-called accomplices of the defendant.''

''I refuse all of the defendant's points.''

[fol. 311] ''(Exception to defendant to refusal of points for charge.)''

20. The learned trial Judge erred in refusing defendant's sixth point for charge, the point (210a), ruling thereon (203a) and exception (203a) being as follows:

''6. The alleged confessions of Jasper Johnson and Clarence Lofton, the so-called accomplices of the de-

fendant, are not legal evidence against defendant inasmuch as their admission deprived defendant of his constitutional right to be confronted by the witnesses against him and to cross-examine them respecting the contents of the same and the manner in which the said confessions were procured."

"I refuse all of the defendant's points."

"(Exception to defendant to refusal of points for charge.)"

21. The learned trial Judge erred in refusing defendant's seventh point for charge, the point (210a), ruling thereon (203a) and exception (203a) being as follows:

"7. The statements of a self-confessed participant in a murder, whether offered in evidence by way of the direct testimony of such a person or by his individual written confession thereto, are highly suspicious and should be scrutinized and received by the jury, if [fol. 312] at all, with the utmost reluctance. Such statements coming from such a tainted source are considered by the law generally as unworthy of credence unless corroborated by other independent and disinterested evidence. There is no such other independent and disinterested evidence in this case whatsoever corroborating or tending to corroborate the statements contained in the confessions of Jasper Johnson and Clarence Lofton which have been offered and read into evidence in this case. You should thereafter look upon the said alleged confessions with distrust and consider them, if at all, with the utmost caution and reluctance."

"I refuse all of the defendant's points."

"(Exception to defendant to refusal of points for charge.)"

22. The learned trial Judge erred in refusing defendant's eighth point for charge, the point (211a), ruling thereon (203a) and exception (203a) being as follows:

"8. If the jury believe that the alleged voluntary confession of defendant was obtained by oppressive, coercive, illegal and unconstitutional methods, by reason of which it does not represent the wholly voluntary

act of defendant, the said confession is incompetent and inadmissible against defendant and must be entirely disregarded by the jury without regard to its supposed truth."

[fol. 313] "I refuse all of the defendant's points."

"(Exception to defendant to refusal of points for charge.)"

23. The learned trial Judge erred in refusing defendant's ninth point for charge, the point (211a), ruling thereon (203a) and exception (203a) being as follows:

"9. If the jury disregard the alleged confession of defendant as having been unlawfully procured in violation of his constitutional rights, there is then no evidence whatever to connect defendant with the crime charged and the verdict must be not guilty."

"I refuse all of the defendant's points."

"(Exception to defendant to refusal of points for charge.)"

24. The learned trial Judge erred in refusing defendant's tenth point for charge, the point (211a), ruling thereon (203a) and exception (203a) being as follows:

"10. In the alleged reenactment of the crime charged against defendant, after the magistrate's hearing and after defendant had been committed, the uncontradicted evidence is that defendant declined to make any statement or to take any part therein. I charge you that in so doing defendant acted within his constitutional rights not to give evidence against himself and [fol. 314] his declaration to that effect cannot be taken by the jury as constituting in any manner an admission of guilt against his interest. Your duty therefore is to disregard entirely and to dismiss from your minds in the consideration of this case all testimony relating to the alleged reenactment of the said crime."

"I refuse all of the defendant's points."

"(Exception to defendant to refusal of points for charge.)"

25. The learned trial Judge erred in refusing defendant's eleventh point for charge, the point (212a), ruling thereon (203a) and exception (203a) being as follows:

"11. In considering the admissibility of the alleged voluntary confession in this case, the jury should give heed to any evidence which has been presented to them and which they may believe respecting the prolonged interrogation of defendant by the police, to whatever was said and done during the same, to the failure of the police, having custody of him, to bring him before the proper magistrate for hearing within the time required by law, to their failure to deliver defendant promptly to the county prison following his commitment by the magistrate, to the fact that the defendant at no time had the aid of a lawyer, and to every other credible, relevant fact and circumstances, offered both [fol. 315] by the Commonwealth and defendant, that may shed light on the manner in which the alleged confession was secured and on its voluntary or involuntary character."

"I refuse all of the defendant's points."

"(Exception to defendant to refusal of points for charge.)"

26. The learned trial Judge erred in refusing defendant's twelfth point for charge, the point (212a), ruling thereon (203a) and exception (203a) being as follows:

"12. In weighing the evidence in this case the jury should bear in mind that the defendant was arrested almost six months after the alleged crime was committed, that not a single independent, disinterested witness has been called by the Commonwealth against him, and that the entire Commonwealth case rests on the alleged voluntary confession of defendant."

"I refuse all of the defendant's points."

"(Exception to defendant to refusal of points for charge.")

27. The learned trial Judge erred in refusing defendant's thirteenth point for charge, the point (213a), ruling thereon (203a) and exception (203a) being as follows:

"13. If the jury entertain any reasonable doubt as to the entirely voluntary character of the alleged [fol. 316] confession of defendant it is their duty to resolve that doubt in favor of defendant and to acquit him."

"I refuse all of the defendant's points."

"(Exception to defendant to refusal of points for charge.)"

28. The learned trial Judge erred in refusing defendant's fourteenth point for charge, the point (213a), ruling thereon (203a) and exception (203a) being as follows:

"14. It is the duty of the Commonwealth to establish by competent evidence beyond a reasonable doubt that defendant committed or participated in the commission of the crime charged in the bill of indictment. In determining whether the Commonwealth has done so it is the duty of the jury to disregard all testimony and evidence necessary to constitute guilt, including that concerning the alleged confession of defendant, as to the correctness of which the jury has any reasonable doubt whatsoever."

"I refuse all of the defendant's points."

"(Exception to defendant to refusal of point for charge.)"

29. The learned trial Judge erred in imposing the following judgment and sentence (291a):

"Judgment and Sentence

The Commonwealth of Pennsylvania versus Aaron [fol. 317] Turner, June Term, 1946. No. 646, charge of murder.

And now, this eleventh day of March, 1947, the sentence of the law is that you, Aaron Turner, be taken hence by the Sheriff of Philadelphia County to the jail of that County from whence you came, and from thence in due course to the Western Penitentiary in Center County, Pennsylvania, and that you there suffer death

during the week fixed by the Governor of the Commonwealth, in a building erected for that purpose on land owned by the Commonwealth, such punishment being inflicted by either the Warden or Deputy Warden of the Western Penitentiary or by such person as the Warden shall designate, by causing to pass through your body a current of electricity of intensity sufficient to cause death and the application of such current to be continued until you are dead.

Frank Smith, J."

(Sgd.) Edwin P. Rome, C. Budd Palmer.

[File-endorsement omitted.]

[fol. 318] IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT, JANUARY TERM, 1947

No. 136

COMMONWEALTH OF PENNSYLVANIA

v.

AARON TURNER, Appellant

Appeal from the Judgment and Sentence of the Court of Quarter Sessions for the County of Philadelphia, as of June Sessions, 1946, No. 646

OPINION OF THE COURT—Filed March 23, 1948

MAXEY, C. J.:

This is an appeal by Aaron Turner from a conviction of murder in the first degree, committed during the perpetration of a robbery. The sentence fixed by the jury was death.

The defendant and Jasper Johnson, alias "Fats" and "Playboy", entered the Ace Broom factory located at 355-57 North 2nd St., Philadelphia, at or about five o'clock Saturday afternoon, December 15, 1945, with the intention of committing a robbery. Clarence Lofton remained in front of the establishment as "look-out". Turner, who was armed with an iron sash-weight, entered the premises first. There he and Johnson met Frank Endres, a factory employee. Turner twice struck Endres over the head with the iron, felling him and Johnson "got his wallet from

him." The proprietor, Charles Simmons, who was in the rear of the store, upon hearing the scuffle came to the front. When he appeared he was hit "a couple of times and he went down". Turner "went into his pockets" and took the wallet containing "over $100". The two felons left the building, joined Lofton, divided the loot and went to a [fol. 319] taproom at "8th and Callowhill and had a few drinks". A policeman passing the premises discovered that the door was open and entered the place. He found the victims lying in "pools of blood and beaten about the head". He had them removed to the hospital. Two days later Endres died. Simmons died 7 days later. There were no witnesses to the crime except its victims and perpetrators.

Defendant was arrested without warrant at 11 A. M. June 3, 1946, six months after the commission of the crime. Information leading to his arrest was volunteered by Lofton, who was apprehended on May 25, 1946 in connection with an investigation conducted into a series of crimes. Johnson was arrested on June 3, 1946 about four-thirty in the afternoon. Turner was held in police custody until June 8, 1946 when he was brought before a magistrate.

At the trial Detective Daniel O'Mahoney testified that Turner was arrested at 11:00 A. M. on June 3, 1946, and was taken to the office of the Homicide Division in City Hall and interrogated about the killing of Endres and Simmons. No threats were made against him and no promises were given him. He was questioned a few hours every day until June 7th, when Turner said he wished to tell the truth, that what the other two men had told about him was true and that he would tell all about it. Turner said: "I was at the broom factory and I struck two men with a piece of iron". On the first day of his arrest Turner was interrogated for about three hours and on the next day for about three hours. This continued for five days until the admission of guilt was made. Detective Fisher also questioned the defendant in O'Mahoney's presence. "Sometimes Detective Carey was there and sometimes Detective Lemron was there and Sergeant Riccardi was there and Detective Thompson was there and Lieutenant Kelly took an active part in the questioning of this man." Sometimes the questioning was done in Turner's cell and sometimes in a room about 12 feet square at police headquarters. [fol. 320] He said that during this period Turner never asked

us "to get in touch with his friends or relatives". He was asked: "Did you ever tell Turner anything he might say could be used against him?" He said that he did so "on the night that he said he wanted to tell the truth. That is the 7th of June."

The questions asked Turner and the answers which he gave after he said he wished to tell the truth were taken down stenographically and transcribed. Turner signed each of the sheets of the transcript containing the questions and answers. Turner described the weapon he used in the killing as "a piece of iron, about 11 inches long, 2½ inches wide, ½ inch thick, with a hole in the end." He was asked: "How many times did you hit the white men over the head when you entered the premises at 355 North 2nd Street on December 15, 1945, at about 5:00 P. M.?" He answered: "I hit the first man twice and I seen Fats get his wallet from him. Q. How many times did you hit the second man? A. I only hit him a couple of times and he went down and I went into his pockets and his wallet and took the wallet and went out with it. There was something over $100.00. I don't know how much. I threw it away while walking out Callowhill Street. Q. How much money did you give Clarence Lofton? A. $87.00. Q. How much did you give Jasper Johnson, alias Fats? A. I didn't give him any money. He said he got $50.00. Q. How much money did Jasper Johnson give you? A. I don't know how much he gave me but I gave Clarence $87.00, out of it and I kept $75.00."

Jasper Johnson and Clarence Lofton also made statements about the killing. These statements were all made in the presence of Turner and they agreed in detail. Each one of the three accused signed each page of each statement.

At the trial Turner denied the truth of his confession and asserted that it had been procured from him by fear and physical abuse. In submitting to the jury the question whether or not the confession was voluntary and uncoerced the trial judge correctly said:

> [fol. 321] "Then, before the confession may be admitted in evidence, the jury must be satisfied beyond a reasonable doubt that the confession has been a free and voluntary one, not induced by fear, coercion, or promise held out, or inducement held out to the defend-

ant. You must first find that the confession was a voluntary statement made by the defendant of his own free will. That seems to me to be the crux of this case.

"For the same reason, if you do not believe this confession was a free and voluntary one, then you have no right to consider it in the evidence. If you believe beyond a reasonable doubt it is a free and voluntary confession, not induced by fear, coercion or inducement held out, or by threats made, then you may accept the confession in your consideration of all the evidence."

On the factual issue the jury after hearing the evidence found against Turner and accepted his confession as being uncoerced and true. As to the confession the court well said in its opinion refusing a new trial:

". . . the defendant is not a poor negro of a low degree of intelligence. From an observation of him and listening to his testimony it is apparent that he is a smart, clever individual. It is apparent that his confession was not concocted by others, and it is clear that it is not a fabrication created by another mind or minds. The statement as given by the defendant is logical and only consistent with his guilt and that of his confederates. It shows that the defendant had this broom factory under observation two days before the murders and that he and his confederates went to the factory on that Saturday afternoon after the close of the business day, for the purpose of robbery. . . . The confession of the defendant and the confessions of his confederates stated what each gave to the other in the way of cash after they had fled from the scene of their crimes. The confession of the defendant shows that in going out Callowhill Street, he threw the sash weight away; that the three confederates then went to saloons where they had some drinks, and that they then parted, promising each other that they would say nothing about the crime. A reading of the confession shows that the defendant was asked whether he had been threatened or harmed and whether he had been promised anything, and it also contains the caution that anything he might say, might be used against him. The defendant was asked if he knew, when he was arrested, what the charge was and he said, 'yes, sir, for the murdering of those two men in the broom factory.' ".

[fol. 322] Anyone with experience in the administration of criminal law who reads the answers Turner made to the questions put to him will readily conclude that the statements he made to the officers were not those of a coerced or scared witness but that they were the statements of a man who had committed a murder and whose recital of its details was clear and explicit. The teller of the gruesome story of this double murder was obviously drawing on his memory and not on a fear-fired imagination. His narrative dovetailed so accurately with the physical facts surrounding the crime and with the story told by his accomplices that there can be no reasonable doubt of the story's truthfulness.

We said in *Commonwealth v. Spardute*, 278 Pa. 37, 48, 122 Atl. 161, that "Where, by the Commonwealth's witnesses, it is shown that a confession is made voluntarily, without such threat or inducement as might secure a false confession, it must be admitted. If afterwards the defendant testifies, or produces other witnesses who testify, that it was not voluntarily made, it becomes a question for the jury." (Citing 6 cases and citing also Underhill on Criminal Evidence, 2d ed., section 126, p. 242.)

In *Commonwealth v. Jones*, 341 Pa. 541, 19 A. 2d 389, we held that the mere fact that defendant was under arrest or was in charge of armed officers and that he was not represented by counsel at the time he made his confession will not make the confession involuntary. As Chief Justice Paxson, speaking for the court, said in *Commonwealth v. Clark*, 130 Pa. 641, 650, 18 Atl. 988, ". . . when a criminal wants to ease his mind by a voluntary confession, it would be a weak sentimentalism to interfere with his doing so."

There is nothing in the constitution [1] or the statutes [2] of

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[1] Pennsylvania's equivalent of the "due process" provision of the 14th Amendment to the United States Constitution is found in Article I, section 9, the last sentence of which reads as follows: ". . . nor can he [the accused] be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land." "Law of the land" means due process of law: Norman v. Heist, 5 W. & S. 171, 40 Am. Dec. 493 (1843).

[2] The Act of May 31, 1718, 1 Sm. L. 105, sec. 4, 19 P. S. 783, requires the courts to assign "learned counsel" to prisoners upon all trials of capital crimes. This is also required by

[fol. 323] Pennsylvania or in the decisions and opinions of this court during the two and a quarter centuries of its existence, requiring that a convicted murderer be turned loose merely because he has not been taken before a magistrate immediately after his arrest or because he was held five days in jail and interrogated a few hours each day by police officers without being given an opportunity to consult with counsel or with friends. Of course, if during that period he was denied food, water, sleep or rest, or if he was beaten or manhandled or threatened or given inducements to confess his guilt, any admission of guilt extracted from him by such means would be judicially rejected as worthless.

We find nothing in any decision of the United States Supreme Court applying the "due process of law" guarantee of the 14th Amendment which would justify us in adjudging Turner's confession inadmissible and which would thereby require his release from custody. The United States Supreme Court has frequently declared in effect that a state's long-established interpretation of its own constitution's "due process" clause is entitled to respect and great weight by the Federal judiciary. In *Otis Co. v. Ludlow Co.* 201 U. S. 140, 154, Justice Holmes speaking for the court said: "We cannot wholly neglect the long settled law and common understanding of a particular state in considering the plaintiff's rights. We are bound to be very cautious in coming to the conclusion that the Fourteenth Amendment has upset what thus has been established and accepted for a long time."

Appellant bases his plea for release chiefly upon the case of *McNabb v. United States*, 318 U. S. 332. The decision in [fol. 324] favor of the prisoners in that case, who had been convicted of murder in a Federal District Court, was expressly based on "the standards" of federal criminal procedure. The Supreme Court after stating that it had "on Constitutional grounds, set aside convictions, both in the federal and state courts, which were based upon confessions

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the Act of March 22, 1907, P. L. 31, sec. 1, 19 PS 784, which also provides for compensation and expenses for such assigned counsel. This has never been interpreted to mean that counsel must be provided for persons accused of capital crimes as soon as those persons are taken into custody. See Com. ex rel. McGlinn v. Smith, 344 Pa. 41, 24 A. 2d 1.

'secured by protracted and repeated questioning of ignorant and untutored persons, in whose minds the power of officers was greatly magnified,' [citing case] or 'who have been unlawfully held incommunicado without advice of friends or counsel.'" [citing cases] said:

> "In the view we take of the case, however, it becomes unnecessary to reach the Constitutional issue pressed upon us. For, while the power of this Court to undo convictions in state courts is limited to the enforcement of those 'fundamental principles of liberty and justice,' Herbert v. Louisiana, 272 U. S. 312, 316, which are secured by the Fourteenth Amendment, the scope of our reviewing power over convictions brought here from the federal courts is not confined to ascertainment of Constitutional validity. . . . Moreover, review by this Court of state action expressing its notion of what will best further its own security in the administration of criminal justice demands appropriate respect for the deliberative judgment of a state in so basic an exercise of its jurisdiction. . . . Quite apart from the Constitution, therefore, we are constrained to hold that the evidence elicited from the petitioners in the circumstances disclosed here must be excluded. For in their treatment of the petitioners the arresting officers assumed functions which Congress has explicitly denied them. . . . The circumstances in which the statements admitted in evidence against the petitioners were secured reveal a plain disregard of the duty enjoined by Congress upon federal law officers. . . . In holding that the petitioners' admissions were improperly received in evidence against them, and that having been based on this evidence their convictions cannot stand, we confine ourselves to our limited function as the court of ultimate review of the standards formulated and applied by federal courts in the trial of criminal cases."[3]

[3] Justice Reed in his dissenting opinion said: "Now the Court leaves undecided whether the present confessions are voluntary or involuntary and declares that the confessions must be excluded because in addition to questioning the petitioners, the arresting officers failed promptly to take them before a committing magistrate. The Court finds a

[fol. 325] The McNabb case is clearly *not* an authority for holding that a conviction *secured in a state court* by the confession of a defendant will be set aside as a violation of the "due process" clause of the 14th Amendment because the prisoner was not immediately taken before a magistrate or because he was interrogated without the presence of friends or counsel.

In *United States* v. *Mitchell*, 322 U. S. 65, where it was held by the United States Supreme Court that the admission of guilt by a prisoner was admissible in evidence in a criminal prosecution in a federal court, and that the admissibility of the evidence was not affected by the subsequent illegal detention of the suspect for eight days before arraignment, Mr. Justice Reed in his concurring opinion said:

> "As I understand McNabb v. United States, 318 U. S. 332, as explained by the Court's opinion of today the McNabb rule is that where there has been illegal detention of a prisoner, joined with other circumstances which are deemed by this Court to be contrary to proper conduct of federal prosecutions, the confession will not be admitted . . . If the above understanding is correct, it is for me a desirable modification of the McNabb case . . . The juristic theory under which a confession should be admitted or barred is bottomed on the testimonial trustworthiness of the confession. If the confession is freely made without inducement or menace, it is admissible."

A recent case in the United States Supreme Court on this subject is that of *Malinski et al* v *New York*, 324 U. S. 401, in which the Court in a "five to four" decision held that the

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basis for the declaration of this new rule of evidence in its supervisory authority over the administration of criminal justice. I question whether this offers to the trial courts and the peace officers a rule of admissibility as clear as the test of the voluntary character of the confession. I am opposed to broadening the possibilities of defendants escaping punishment by these more rigorous technical requirements in the administration of justice. If these confessions are otherwise voluntary, civilized standards, in my opinion are not advanced by setting aside these judgments because of acts of omission which are not shown to have tended toward coercing the admissions."

confession by an accused was inadmissible in evidence as being a coerced confession. The majority decision was based upon a statement which was made by the prosecuting attorney in summing up his case for the state, in which he used the following language:

> "Why this talk about being undressed? Of course, they had a right to undress him to look for bullet scars, and keep the clothes off him. That was quite proper police procedure. That is some more psychology—let him sit around with a blanket on him, humiliate him there for a while; let him sit in the corner, let him think he is going to get a shellacking."

[fol. 326] The Supreme Court said: "If we take the prosecutor at his word, the confession of October 23rd was the product of fear—one on which we could not permit a person to stand convicted for a crime." The Supreme Court then added, "But it is said that this coerced confession was not introduced in evidence, that it was submitted to the jury only insofar as it threw light on the voluntary character of the subsequent confessions . . ." The Supreme Court further said: "There were repeated references at the trial to the confession of October 23rd. The prosecutor made emphatic references to it in his summation. On this record the fact that Malinski confessed to the crime shortly after he was arrested stands out in bold relief. The use made of the confession could hardly have been more effective had its details been put in evidence. It was not insulated from the trial." The Supreme Court then said: "We must consider the case, therefore, as one in which a coerced confession was employed to obtain a conviction." In that case Chief Justice Stone in his dissenting opinion, in which he was joined by Mr. Justice Roberts, Mr. Justice Reed, and Mr. Justice Jackson, said:

> "And the jury was instructed that it could consider the second confession, only if it found it voluntary, and that it could convict in that case. In view of these instructions, we cannot say that the first confession was submitted to the jury, or that, in the absence of any exception or request to charge more particularly, there was any error of which petitioner can complain. Hence the jury's verdict must be taken as conclusively establishing that the second confession was voluntary and

"was not induced by any coercion attending the first. Lyons v. Oklahoma, 322 U. S. 596 . . . It is not the function of this Court, in reviewing, on constitutional grounds, criminal convictions by state courts, to weigh the evidence on which the jury has pronounced its verdict, also in the light of the arguments of counsel, or to sit as a super-jury. We have, in appropriate cases, set aside state convictions as violating due process where we were able to say that the case was improperly submitted to the jury or that the unchallenged evidence plainly showed a violation of the constitutional rights of the accused . . . the due process clause of the Fourteenth Amendment is concerned with matters of [fol. 327] substance. It cannot rightly be made the instrument of reform of the manners of state officials. And however reprehensible or even criminal the acts of the state officials may be, in so far as the conduct of the trial is concerned, they do not infringe due process unless they result in the use against the accused of evidence which is coerced or known to the State to be fraudulent or perjured, or unless they otherwise deny to him the substance of a fair trial, which is due process. [citing cases] Judged by these standards, we think that there was no denial of due process in submitting petitioner Malinski's confession to the jury in the manner in which they were in fact submitted, and that there is no constitutional ground for setting aside the jury's verdict against him."

The majority of the United States Supreme Court held that the remarks of the prosecuting attorney in his summation to the jury amounted to an admission by him that the confession of the prisoner was coerced. The minority took the view that the "prosecutor did not testify in the case . . . or had any knowledge of the alleged coercion . . . the prosecutor's remarks did not tend to prove anything more than his own ineptitude . . . It is not the function of this court . . . to sit as a super-jury."

In the instant case there was no coercion of Turner, either admitted or proved. His answers to the questions put to him revealed intrinsically the voluntary character of his statements, and the testimony of the Commonwealth's witnesses furnished additional proof that Turner was not coerced into talking falsely against himself. The trial judge in admitting Turner's incriminating statements and sub-

mitting them to the jury with proper instructions for testing their truthfulness followed the rules sanctioned by this court during its entire existence. In Commonwealth v. Dillon, 4 Dallas 115 (1792), this court said:

> "If such [incriminating] declarations are voluntarily made, all the world will agree, that they furnish the strongest evidence of imputed guilt . . . The true point for consideration, therefore, is, whether the prisoner has falsely declared himself guilty of a capital offence?"

In *Commonwealth* v. *Goodwin*, 186 Pa. 218, this court in an opinion by Justice Mitchell cites with approval the fol- [fol. 328] lowing from Wharton on Criminal Evidence, sec. 644:

> "Though it is necessary to the admissibility of a confession that it should have been voluntarily made, that is, that it should have been made without the appliances of hope or fear from persons having authority; yet it is not necessary that it should have been the prisoner's own spontaneous act. It will be received, though it were induced by spiritual exhortations, whether of a clergyman or of any other person; or by a solemn promise of secrecy even confirmed by an oath; . . . or by any deception practised on the prisoner, or false representation made to him for that purpose, provided there is no reason to suppose that the inducement held out was calculated to produce any untrue confession, which is the main point to be considered:" 1 Greenleaf on Ev. par. 229.

Turner's statements appear to be those of a man whose narrative was based on first-hand knowledge and not on induced fabrication. What he stated fitted into all the admitted facts. The glibness of his answers revealed that he rather enjoyed telling the story of a brutal double murder and his part in it.[4] Anyone believing Turner's later asser-

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[4] Turner stated (in addition to what is already quoted in this opinion) that "on Saturday, December 15, 1945" he said to Johnson and Lofton, "we have a job to do, and they went with me. . . . when we passed in the second door we met the man and I hit him the man with a piece of iron which I had wrapped up in a piece of newspaper. Q. When you say

tions that he had been coerced into making his incriminating statements about the commission of these murders would be too credulous to be safely entrusted with any part in the realistic work of administering the criminal law with justice both to the accused and to society.

[fol. 329] In cases of this kind the duty of the judiciary is to hold the balance true between the safety of society and fair play for an accused. Solicitude for the feelings of an accused must not be permitted to blind either judicial or police officers to the rights of the multitude to have criminals apprehended and their further depredations prevented. Any method of extracting confessions by means which would cause a prisoner to falsely confess guilt in order to be relieved of unendurable immediate suffering will not be tolerated in any civilized state. On the other hand, for a court to hold that a confession made by a well fed and decently cared for prisoner after he has been held in custody a few days without counsel or contact with friends and after he has been questioned a few hours every day by police officers in reference to a crime of which he is suspected, is inadmissible as being a coerced confession would be unrealistic and impractical. Such a judicial holding would result in a vast increase in the already too large number of felons who go unpunished and are free to prey upon

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you looked the place over, the broom factory . . . what did you have in mind? A. I figured it was quiet around there and I figured it was easy money to rob." He stated the size of the weapon he used and mentioned "the hole in the end" of it. Jasper Johnson in his confession, which Turner also signed, said that after they got to the broom factory, "we were met by the smallest fellow, a middle aged man. Tree-top [Turner] slugged him on the side of the head. The fellow was on the floor scuffling, trying to get up. I runs in his pocket pulls out a wallet out of the hip pocket . . . I looks around to see Tree-top and the other man. He was on the floor and Tree was over him. He had done slugged him." Clarence Lofton, the other confederate, made a statement, which Turner also signed. Lofton, who was the "lookout", said that when they came out of the place Fats or Tree-top said, "One of them wasn't no trouble at all but one of the sons of bitches I had to give a hell of a blow to." From Johnson's statement the man who thus boasted of the "hell of a blow" he gave one of the victims was Turner.

law abiding citizens. These enemies of society naturally endeavor to commit their crimes where there are no witnesses except themselves and their victims. When the victim is killed the murderer feels himself safe. Fortunately for society, criminals soon become possessed of an impulse to disclose their guilty secrets.[5] This impulse is

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[5] In the well-known case of Commonwealth of Mass. v. Joseph J. and John F. Knapp et al. for the murder of Captain Joseph White in 1830, the facts were that the Knapp brothers had for $1,000 hired one Crowninshield to bludgeon and stab to death Captain Joseph White, aged 82, so that Joseph Knapp could through Knapp's mother-in-law inherit (as he erroneously believed) a large portion of Captain White's estate. A little more than two months after the murder, Joseph J. Knapp, on the third day of his imprisonment, confessed his guilt and implicated Crowninshield, who later committed suicide in jail. At the trial of John F. Knapp, Joseph refused to testify for the Commonwealth. Both brothers were convicted and executed. Daniel Webster was special counsel for the Commonwealth. In his closing address for the Commonwealth, Webster, after vividly describing the midnight murder of the "aged victim" and recounting the confidence of the assassin that his guilt would remain undiscovered, said: "He had done the murder. No eye has seen him no ear has heard him. The secret is his own, and it is safe! Ah! Gentlemen, that was a dreadful mistake. Such a secret can be safe nowhere. . . . the guilty soul cannot keep its own secret. It is false to itself; or rather it feels an irresistible impulse of conscience to be true to itself. It labors under its guilty possession, and knows not what to do with it. The human heart was not made for the residence of such an inhabitant. It finds itself preyed on by a torment, which it dares not acknowledge to God or man. A vulture is devouring it, and it can ask no sympathy or assistance, either from heaven or from earth. The secret which the murderer possesses soon comes to possess him, and, like the evil spirits of which we read, it overcomes him, and leads him whithersoever it will. He feels it beating at his heart, rising to his throat, and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and hears its workings in the very silence of his thoughts. It has become his master. It betrays his discretion, it breaks down his courage, it con-

invigorated and vocalized by skilful interrogation. The facts just stated are well known to any person with any [fol. 330] knowledge of human psychology or with any practical experience in the administration of criminal law. Criminals possesed of this desire to reveal their crime often lose that desire as soon as counsel or "pals" advise them to "keep their mouth shut". In the unending warfare between the criminal and society a due regard for the latter's safety requires that officers should have a reasonable time within which to interrogate an accused while he is in their custody and being fairly treated and without their efforts to elicit the truth being frustrated by persons interested in saving criminals from the just consequences of their crimes.[6] The test to be applied to confessions secured by police officers is this long established and judicially sanctioned one, to wit: "Was the confession secured under such circumstances and by such methods as to make it testimonially trustworthy?" Only when it is manifestly worthless as evidence should it be summarily rejected. Except in those cases where the confession is so obtained as to make its rejection the obvious duty of the trial judge, the jury acting under proper instruc- [fol. 331] tions is the tribunal to apply the above test.

Wigmore on Evidence, 3rd Edition, pages 318-319, section 851, pertinently says in justification of the interrogation of accused persons by officers of the law:

> "Miscalling a thing by a bad name does not make it any worse than it is. Let us therefore ask whether there is any reason why the traditional process of lengthy continuous interrogations in seclusion, immediately

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quers his prudence. When suspicions from without begin to embarrass him, and the net of circumstances to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed, it will be confessed, there is no refuge from confession but suicide, and suicide is confession."

[6] In the instant case Turner while in the cell room of City Hall, apparently shortly after his arrest, called "across the top of the cells to Jasper Johnson to stand tight and not to talk." He was then transferred to the station house at 15th and Snyder Avenue. He was later brought back to City Hall "after he had promised not to try to influence other prisoners."

after arrest, calls for exclusion of a confession thus made.

"(1) In the first place, an innocent person is always helped by an early opportunity to tell his whole story; hundreds of suspected persons every day are set free because their story thus told bears the marks of truth. Moreover, and more important, every guilty person is almost always ready and desirous to confess, as soon as he is detected and arrested. This psychological truth, well known to all criminal trial judges, seems to be ignored by some Supreme Courts. The nervous pressure of guilt is enormous; the load of the deed done is heavy; the fear of detection fills the consciousness; and when detection comes, the pressure is relieved; and the deep sense of relief makes confession a satisfaction.[7] At that moment, he will tell all, and tell it truly. To forbid soliciting him, to seek to prevent this relief, is to fly in the face of human nature. It is natural, and should be lawful, to take his confession at that moment—the best one. And this expedient, if sanctioned, saves the State a delay and expense in convicting him after he has reacted from his first sensations, has yielded to his friends' solicitations, and comes under the sway of the natural human instinct to struggle to save himself by the aid of all technicalities.

"2. In the case of professional criminals, who usually work in groups, there is often no hope of getting at the group until one of them has 'peached', and given the clues to the police. The police know this, and have known it for generations in every country. The only ones who apparently do not know it are some of the Supreme Court judges. A thorough questioning of the first suspected person who is caught makes possible the pursuit of the right trail for the others. To forbid this is to tie the hands of the police. The attitude of some judges towards these necessary police methods is lamentable; one would think that the police, not the criminals, were the enemies of society. To disable the detective police

[7] "After this sense of nervous relief has passed, the inclination to tell disappears; and most confessions are in fact made within a short time after arrest." Footnote, page 319, Wigmore, supra.

from the very function they are set to fulfill is no less than absurd. Let the judges who sit in judgment on crime look a little into the facts. Let them not sit up aloft and dictate a rule which ignores the well-known facts of criminal life and hampers the needful methods of justice."

[fol. 332] Even if it should be decided in a given case that a prisoner had been technically wronged by an officer's refusal to take him before a committing magistrate almost immediately after his arrest for a felony, it does not follow that under the American constitutional system society must be more grossly wronged by having the prisoner turned loose upon it after he has confessed his guilt. Just as in morals "two wrongs do not make a right", so in law committing a wrong against an accused cannot be righted by committing a wrong against society.

This court has always protected accused persons against convictions other than by due process of law. The "due process" provision in the 14th Amendment to the Federal Constitution conferred on citizens of this Commonwealth no rights in addition to those which they had for centuries enjoyed under state judicial protection. As the Supreme Court of the United States in Mobile & Ohio Railroad v. Tennessee, 153 U. S. 486, 506, said: "That [14th] Amendment conferred no new and additional rights, but only extended the protection of the Federal Constitution over rights of life, liberty, and property that previously existed under all state constitutions." In Interstate Railway Co. v. Massachusetts, 207 U. S. 79, 87, Justice Holmes speaking for the United States Supreme Court said: "The traditions and habits of centuries were not intended to be overthrown when that [14th] Amendment was passed."

We have no hesitation in declaring that the use in the instant case of Turner's confession in no way breached his right to a trial by due process of law. Nor is there any merit in the contention that the joint confessions made by Turner and his accomplices were received in evidence against him. The mutually incriminating statements were made by each of the accused in the presence of all. Not only did Turner hear himself accused by those who at the same time confessed their own guilt but by signing *their* statements he *verified* them. On the authority of Commonwealth v. Oreszak, 328 Pa. 65, 195 Atl. 45, and Common-

wealth v. Brooks, 355 Pa. 551, 50 A. 2d 325, all three state-
[fol. 333] ments were admissible. It was also admissible under the authority of Commonwealth v. Vallone, 347 Pa. 419, 32 A. 2d 889, where this court held that "when a statement made in the presence and hearing of a person is incriminating in character and naturally calls for a denial but is not challenged or contradicted by the accused although he has opportunity and liberty to speak, the statement and the fact of his failure to deny it are admissible in evidence as an implied admission of the truth of the charges thus made."

When Turner was taken to the scene of the homicides, and his two confederates, Johnson and Lofton, reenacted the murders of Simmons and Endres, in the commission of which crimes they assigned Turner the major role, he made no denial of their accusations but stood mute. His guilt of a brutal killing committed in the perpetration of robbery was proved beyond a reasonable doubt and in a fair trial. The jury fixed the only appropriate penalty, that of death.

All the assignments of error are overruled, the judgment is affirmed and the record is remitted to the court below so that the sentence duly imposed may be carried out.

Mr. Justice Jones concurs in the judgment.

[File endorsement omitted.]

[fol. 334] IN THE SUPREME COURT OF PENNSYLVANIA FOR THE EASTERN DISTRICT

[Title omitted]

PRAECIPE FOR CERTIFICATION OF RECORD FOR THE UNITED STATES SUPREME COURT—Filed June 4, 1948

To the Prothonotary of the Supreme Court of Pennsylvania,

SIR:

It is requested that there be prepared a certified copy of the record of the above captioned case as it appears in the Supreme Court of Pennsylvania for use in connection with the filing of a petition for certiorari in the United States

Supreme Court, and that there be included in such certified copy of the record the following:

1.—Docket entries.
2.—Statement of Questions Involved.
3.—Assignments of Error.
4.—The printed record as used at the argument before the Supreme Court of Pennsylvania.
5.—The opinion of the Supreme Court of Pennsylvania.

(Signed) Edwin P. Rome, Counsel for Aaron Turner.

[File endorsement omitted.]

[fols. 335-336] Prothonotary's Certificate to foregoing transcript omitted in printing.

[fol. 337] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 567, Misc.—

On petition for writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS; GRANTING PETITION FOR WRIT OF CERTIORARI, ETC.—June 21, 1948

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted and the case is transferred to the appellate docket as No. 879. The case is assigned for argument immediately following Harris vs. State of South Carolina, No. 845, October Term, 1947.

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 107

AARON TURNER,

Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

BRIEF FOR PETITIONER

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 107

AARON TURNER,

Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

BRIEF FOR PETITIONER

Opinions Below

The opinion of the Supreme Court of Pennsylvania is reported in 358 Pa. 350, 58 A. (2d) 61, and in the Record at page 309. The majority opinion of the court *en banc* refusing a motion for new trial appears in the Record at page 264, the dissenting opinion at page 293.

Basis of Jurisdiction

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended, 28 U. S. C. A., Sec. 344(b).

The decision sought to be reviewed is a final judgment of the Supreme Court of Pennsylvania, the highest court of that State, affirming a conviction and sentence of death. It was filed on March 23, 1948. On June 11, 1948, there were filed in this Court petitioner's motion for leave to proceed in *forma pauperis* and his petition for certiorari. On June 21, 1948, the Court granted the motion and petition.

Questions Presented

1. Is it a violation of the Due Process clause of the Fourteenth Amendment of the Constitution of the United States to receive in evidence on the trial of a capital case confessions obtained after the accused had admittedly been held by the police for five days without a preliminary hearing, questioned intensively for hours at a time day and night, and were without assistance of counsel, relatives or friends?

2. Is it a violation of the Due Process clause of the Fourteenth Amendment of the Constitution of the United States to receive in evidence on the trial of a capital case the purported confessions and statements of alleged confederates who, although available, were not produced by the Commonwealth so as to accord the accused his right to confront the witnesses against him?

3. Is it violation of the Due Process clause of the Fourteenth Amendment of the Constitution of the United States to fail to furnish the aid of counsel at a magistrate's hearing to one accused of a capital offense?

4. Is it a violation of the Due Process clause of the Fourteenth Amendment of the Constitution of the United States to receive in evidence on the trial of a capital case statements elicited at a preliminary hearing before a magistrate at which time the accused was without counsel, had not been informed of his right to counsel or to cross-

examine the witnesses against him and had claimed in vain his constitutional privilege against self-incrimination?

5. Is it a violation of the Due Process clause of the Fourteenth Amendment of the Constitution of the United States to receive in evidence on the trial of a capital case testimony concerning a purported reenactment of the crime staged without a court order two days after the accused had been committed without bail but was, despite the commitment, still being held illegally by the police without assistance of counsel, relatives or friends?

Constitutional and Statutory Provisions Involved

There are set forth in full in the Appendix to this brief, *infra* pages 44-45, *et seq.* the provisions of the Constitution of the United States and of the Constitution and statutes of Pennsylvania which are pertinent to the issues here involved and upon which petitioner relies.

Statement of the Case

The petitioner is presently confined under sentence of death, having been tried and convicted of first degree murder in the Court of Quarter Sessions of Philadelphia County, Pennsylvania, on September 19-20, 1946.

A motion for new trial was denied by the court *en banc*, one judge dissenting, on February 11, 1947, and, on March 23, 1948, the judgment was affirmed by the Supreme Court of Pennsylvania, one judge noting his concurrence.

The record discloses the following salient facts:

On December 15, 1945, a passing policeman discovered two white men lying unconscious in a small broom factory in Philadelphia (R. 14). Both men subsequently died, the cause of the death of Frank Endres, for which petitioner was tried, being given as "crush of skull" (R. 13).

About six months later, at around 11:00 A. M. on June

3, 1946, petitioner was arrested at 12th and South Streets in Philadelphia (R. 21) and taken to City Hall. Later that same afternoon one Jasper Johnson was also arrested in connection with this crime (R. 22). A third negro, Clarence Lofton had been arrested on May 24, 1946[1] (R. 22).

Petitioner is a young negro, 26 years of age at the time of trial. He is one of eight children and was born and brought up in Marshville, North Carolina, where he went to school up to the sixth grade (R. 111). When his mother died at that time he left school to go to work to support two younger sisters. He worked at a saw mill and on a farm in and around Marshville (R. 111) but finally came to Philadelphia in 1939 where he worked as a longshoreman (R. 111) loading trucks along the waterfront (R. 112). So far as the record discloses, he has no record of any prior convictions or sentences and hence no familiarity with the technicalities and intricacies of criminal law and procedure.

What follows here is undisputed. After Turner's arrest on June 3, 1946, the police admit they "questioned him from that time until he made a statement" (R. 74). He was not taken before a magistrate until about 10:30 A. M. on June 8, 1946 (R. 26) and although at that time he was held without bail the police admit they kept him in their custody and did not deliver him to the county prison until June 12, 1946 (R. 137-138, 180).

Detective O'Mahoney, who had been assigned to the case and who helped make the arrest (R. 22), testified that he

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[1] These three were indicted jointly but a severance was granted and petitioner was tried first for the murder of Frank Endres. Johnson was brought to trial following Turner's conviction, pleaded not guilty, repudiated his alleged confession and raised essentially the same defenses set up by petitioner. Johnson was convicted, sentenced to death and his appeal is now pending in the Supreme Court of Pennsylvania. Lofton, the only one of the three with a criminal record, pleaded guilty and received a life-sentence on the recommendation of the District Attorney because he aided in the "solving of other murders."

questioned Turner for "about three hours" on June 3, "for three hours" on June 4, "maybe four" hours on June 5, "maybe three" on June 6 (R. 28). He said, "I did not time myself. Whatever time I had I went there and talked to him" (R. 28). He also questioned Turner on at least two nights, the 3rd and 7th, for from 2½ to 3 hours on each occasion (R. 31).

It was further admitted that six other officers, Detectives Fisher, Carey, Lennon, Riccardi, Thompson and Lt. Kelly, also questioned petitioner during this five day period, the police taking turns (R. 28) and acting alone and in groups (R. 67). These same officers were present at the magistrate's hearing (R. 30-31), although only Lt. Kelly testified there.

Detective Thompson, who with O'Mahoney arrested Turner on June 3, testified that he questioned petitioner "throughout the entire time (June 3) and four or five days following" (R. 65), including a number of times at night (R. 65-66). Detective Carey testified that he also questioned Turner for about three hours in the evening of June 3 (R. 73) and for about two hours in the afternoon of June 6. In the evening of June 6, Carey said, "I was there about three hours but of course I did not question him during all that time. The other detectives did" (R. 73). On the night of June 7, Carey did question petitioner from "about eight o'clock until about eleven o'clock (R. 71) and, according to the detective, on that night, before the magistrate's hearing, Detectives O'Mahoney, Lennon, Riccardi and Lt. Kelly were also "in and out" trying to get the truth concerning it" (R. 72).

Lt. Kelly, who was in charge of the homicide squad investigating this crime, stated he was unable to recall even approximately how long he had questioned petitioner during the period of his custody (R. 91-92), but Inspector Richardson, the Superintendent of Police, testified that *he*

had been present and actually interviewed the prisoners during "the course of four or five days" (R. 187), although neither the police nor petitioner, when asked concerning this very point, had mentioned ever seeing this top police official at these sessions (R. 28, 31, 66, 71, 72, 114, 118, 119, 122, 124). Richardson testified, however, on direct examination, that: "I would stay sometimes an hour, sometimes two hours, according to how much time I had to stay with them" (R. 186-187). On cross-examination this witness made his participation even greater for "each day", he said, "I would go up in the morning, and I would go up in the afternoon, whenever I had time—three or four times a day I would go up, and at night" (R. 187).

Asked why Turner was not taken before a magistrate on June 3, O'Mahoney said, "We had a lot of questioning to do . . . He did not give us the answers that somebody else told us he could give . . . He did not give the answers the right way" (R. 26). For the same reasons the police held him for the next four days (R. 27). As Detective Carey said, it was because "We questioned him from that time (June 3) until he made a statement" (R. 74).

Lt. Kelly said on this point, "I didn't think it was the proper time to take him before a magistrate. I felt that it would hurt the Commonwealth's case. I was not prepared. There are many thing to be run out. At first opportunity I gave them (Turner, Johnson and Lofton) a hearing" (R. 89). Pressed as to why petitioner was not given an immediate hearing, Kelly said: "That is a hard question to answer directly. He was picked up with "others, some that we wanted and some that we did not want and we had to separate the wheat from the chaff, and when I confronted him with the other defendants they had a lot of trouble trying to straighten out the details among themselves which took a lot of time" (R. 89).

It was admitted, too, that while petitioner was in custody

and before he was given a preliminary hearing, he was moved from the cellroom in City Hall to the police station at 15th Street and Snyder Avenue, where he was kept for "probably a day" (R. 26). O'Mahoney said that was "on orders of Lt. Kelly to have two other men confront him" (R. 32); but there is no further evidence of any confrontation having taken place. Thompson, however, testified that the interrogation continued at the Synder Avenue station and that he and O'Mahoney and Fisher participated in it, both separately and together (R. 66-67). A back room on the second floor was used for this purpose (R. 67).

Lt. Kelly later testified that Turner had been sent to the Snyder Avenue station because he had been attempting to persuade Johnson not to talk and that "He was brought back to City Hall after he had promised not to try to influence other prisoners" (R. 172). But Inspector Richardson testified that Turner asked permission to talk with Johnson to get him to tell the truth (R. 185), that Turner and Lofton "did most of the talking" to Johnson to get him to confess (R. 185) and that actually Turner assisted the police in getting the confession from the other two men (R. 186).

Richardson added, furthermore, that "the three boys made the admission" to him and the other officers "around three or four o'clock on Friday afternoon (June 7)" (R. 186) and that Turner actually told the police that Johnson "was ready to make a clean breast of everything" (R. 186). Nevertheless, according to O'Mahoney (R. 27, 30), and Lt. Kelly (R. 77), it was not until the night of June 7 that petitioner said he wanted to tell the truth. O'Mahoney (R. 31) and Carey (R. 71-72) both testified that they questioned petitioner on the night of June 7 from eight o'clock until eleven and Carey added that Lennon, Riccardi and Lt. Kelly (but not Inspector Richardson) were also "in and out" that night trying "to get the truth" (R. 72).

O'Mahoney stated further that it was not until that night that petitioner was first advised of his constitutional privilege against self-incrimination (R. 30).

Alleged confessions, which were received in evidence over objection and exception (R. 35, 42, 47, 110), were taken from each of the three accused on the morning of June 8, each statement being signed by all three men. O'Mahoney testified that the whole morning was required for this purpose (R. 54) and the purported confessions, from the notation of time on their face, "about 9:45 to 12 noon", would seem to support this (R. 36, 43, 48).

Yet the magistrate's hearing was held on that same Saturday morning, June 8, starting about 10:30 A. M., according to O'Mahoney (R. 26), and the magistrate was then informed that each man had signed a statement (R. 63). Despite this fact, Thompson testified at the trial that he did not think the three statements were completed and transcribed at the time of the hearing (R. 63) and Lt. Kelly could not say that Turner's purported confession had actually been signed at that time (R. 61). Although O'Mahoney said Turner signed "about 10:00 or 10:15" (R. 32), Carey said that petitioner did not sign until sometime after the hearing (R. 72),[2] and although Kelly did say that the taking of the confessions was interrupted for the magistrate's hearing (R. 77), O'Mahoney had no such recollection (R. 54). Later Kelly said the confessions were signed on June 9 (R. 174).

It was admitted that Turner was never warned of his constitutional rights at any time until the night of June 7 (R. 30) and that he never saw a lawyer during the entire period of his custody (R. 28, 67, 72, 86). It was undenied that he never saw anyone other than the police during the

[2] Turner testified he did not sign until sometime between June 10 and June 12, while still in police custody (R. 129).

nine days they held him and that the police tried to get a statement from him by threatening him with the fact that his supposed confederated had "opened up" on him (R. 117, 125).

According to the three alleged confessions, Turner, Lofton and Johnson went to the broom factory where there was "a job to do" (R. 37). Lofton remained outside while the other two went in. Turner hit "the first man" with a piece of iron which he had wrapped in paper and then, while Johnson was going through the man's pockets, petitioner met "the other man", hit him over the head with the iron, took his wallet and left. The three then purportedly split up the money and separated (R. 37, 38).

There was also read in evidence at the trial, over objection and exception, testimony of the three accused taken at the magistrate's hearing (R. 78-82, 110), where none was represented by counsel nor informed of his right to cross-examine. This testimony is generally to the same effect as the events related in the purported confessions.

It appears that at the magistrate's hearing the District Attorney warned the three men they could remain silent, that Johnson and Lofton both testified, and that then Turner was, without more, sworn and questioned as follows (R. 83, see also 57-58):

"Q. Do you want to say anything to his Honor?
A. No, sir.
Q. Can you add anything?
A. No, sir.
Q. You don't want to add anything? Do you agree with the testimony that these two men have given in Court?"

Questioned in this fashion, petitioner told approximately the same story that appears in his alleged con-

fession although it is undisputed that he was seeking to claim his constitutional privilege (R. 146).

Apart from the confessions and the testimony taken at the magistrate's hearing, the only other item of evidence introduced by the Commonwealth at the trial was the report of a so-called reenactment of the crime staged on June 10, after the accused had been committed without bail by the magistrate but while they were still being held by the police. This evidence was introduced over objection and exception (R. 110) principally through the testimony of Detective Sergeant Riccardi (R. 93) who related how Johnson and Lofton reenacted the events of December 15, 1945, and that Turner, when questioned at the broom factory, replied, "I have nothing to say" (R. 96).

Riccardi said he had been present at the taking of the confessions and at the magistrate's hearing (R. 93) and hence he knew that the case had been "broken" and the suspected perpetrators ordered committed to the county prison. When asked why, despite this, it was thought necessary to have a reenactment of the crime, he stated frankly, "Well, it is a matter of evidence in our homicide case" (R. 97).

Petitioner took the stand in his own behalf at the trial. He told a detailed story of his arrest and of the brutal physical and mental duress to which he was subjected (R. 113 **et seq.**) in order to extract a confession. So much of this story as has to do with the use of physical violence only is denied by the police. According to petitioner, however, his torment began very shortly after he was picked up (R. 113). He said that he was kicked in the legs (R. 113, 115, 120), punched in the stomach (R. 115) and brought to his knees by having his arm twisted (R. 115). When he begged Detective Thompson not to kick him because of a hernia, he was told, "... your guts will be hanging out before I get through with you" (R. 115). Later in his

interrogation he was admonished by Sgt. Riccardi to "answer the questions right" by being punched in the face (R. 117). More than once he was made to stand spread-eagled and if he permitted his outstretched hands to fall he was hit on the hands and wrists with a stick (R. 120, 131). The same procedure was repeated at the second police station to which he was taken where he was hit from behind, punched in the face, beaten with a chair and had his arm twisted (R. 122-123).

Petitioner testified that he was constantly urged "to come along", to talk, and was threatened with further beatings because he was "lying" (R. 125-126) and with being removed again from City Hall (R. 126). He was told by Lt. Kelly that he was "very stubborn" and that the Lieutenant had no "use for niggers anyhow" (R. 130) and that "He said if he had his way with me he would throw me down the damn elevator and make me break my neck" (R. 130). At one point, Detective O'Mahoney told Detective Carey, a negro, that "he could go out and eat" because O'Mahoney "didn't want to see a black man beat a black man" (R. 131).

Petitioner denied that Johnson and Lofton signed their confessions in front of him (R. 141) or that he knew when they had signed (R. 140) or that he ever signed his alleged confession before the magistrate's hearing (R. 140). He admitted his signature but when asked why he had signed the statements, said, "I had to sign it" (R. 144), and "I had to say it" (R. 145). He related how Detective Thompson gave him a drink of whiskey before the magistrate's hearing to "get your nerve up" (R. 126). He said that at the hearing there was "No one around but detectives and me" (R. 145); that he said nothing about his beating because he was scared (R. 146) and that although he did not want to testify at the hearing he thought he had to when the District Attorney questioned him (R. 146).

Turner denied absolutely any participation whatever in the crime (R. 149). He said he could not remember where he was on December 15, 1945, it being ten months before, but denied absolutely being anywhere near the broom factory then or at any other time (R. 133) except when the police took him there. He said he never saw anyone other than the police during his custody (R. 133).

The only other witness called by the defense was petitioner's financee, Mazy Brown, who testified she had seen Turner on the morning of June 3, 1946, before his arrest at which time he had no marks or bruises (R. 158). She received a letter from him dated June 13, 1946, from the county prison and visited him there on June 17, when she noticed his lip was swollen, there were "wounds on his leg" and a "knot" on his hand (R. 160-161). She also described her futile attempts to find a lawyer to aid petitioner. One lawyer asked a fee of one thousand dollars, the Legal Aid advised her it did not handle murder cases and she was equally unsuccessful at the National Association for the Advancement of Colored People (R. 162-163).[3a]

In rebuttal, the Commonwealth called the various police officers involved who denied the use of any physical violence and asserted, on the contrary, that on the night before the accused confessed they were given pie and ice cream (R. 173) and that on Sunday, June 9, his day off, Detective Fisher asked special permission to take the prisoners home cooked food (R. 169, 174).

The trial judge specifically refused to charge the jury that it could consider the prolonged detention of petitioner in determining the voluntary character of the alleged con-

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[3] Petitioner's present counsel were appointed on July 6, 1946, pursuant to the Act of March 22, 1907, P.L. 31, 19 Purdon's § 784, which required petitioner to file an affidavit that he was destitute of means to employ counsel. It will be recalled that the magistrate's hearing was held on June 8, 1946.

fessions (R. 204, 212) after having previously refused to consider that detention as a ground for objection to their admission in evidence (R. 35, 42). So, too, with the petitioner's right to counsel at every stage of the proceedings in a capital case (R. 42, 204, 205, 212) and with his privilege against self-incrimination (R. 58, 209). The trial judge also refused to charge the jury to disregard the evidence obtained at the alleged reenactment of the crime staged without court order after petitioner and his purported confederates had been committed without bail (R. 211, 212, 203).

Subsequent to the jury's verdict of guilty, a majority of the court *en banc* denied petitioner's motion for new trial. To the argument that the confessions were inadmissible because the *admitted facts* showed an inherently coercive situation, the court answered that the *disputed facts* were properly submitted to the jury (R. 278). To the argument that petitioner's prolonged detention for the admitted purpose of extracting a statement from him rendered his confession inadmissible, the court replied that it was a matter for the jury to consider (R. 268-269) although instruction on this point had been refused (R. 204, 212). To petitioner's claim that he had a constitutional right to have a lawyer *appointed* for him at the preliminary hearing on a capital offense whether or not he requested it, the court said the question whether he had *requested* counsel was for the jury to determine (R. 282). Although it is undisputed on the record (R. 58, 146) that petitioner wanted and tried to exercise his constitutional privilege to remain silent at the magistrate's hearing but was questioned anyhow, the court held that he was entitled to his privilege if he claimed it (R. 285) but that he did not claim it (R. 286). As to the police holding petitioner and his alleged confederates, after their commitment without bail, in order to stage a reenactment to obtain further evidence, the court said such prac-

tice was improper and illegal if done against the will of the accused, but that it was not shown to be involuntary and moreover it was not prejudicial since there was no showing that the jury was swayed by the evidence thus introduced (R. 288-289).

One judge of the court *en banc* dissented on the ground that the undisputed facts showed as a matter of law "that there was no free and voluntary confession" (R. 295) and that the case came within the purview of *Brown* v. *Mississippi*, 297 U. S. 278; *Chambers* v. *Florida*, 309 U. S. 227; *White* v. *Texas*, 310 U. S. 530; *Ward* v. *Texas*, 316 U. S. 547; *McNabb* v. *United States*, 318 U. S. 332; *Anderson* v. *United States*, 318 U. S. 350; and *Malinski* v. *New York*, 324 U. S. 401. It was said that the time has come "when the third degree, or any of its euphemistic alternatives is branded the evil "that it is" (R. 296).

In affirming the conviction and sentence, the Supreme Court of Pennsylvania held that "Anyone with experience in the administration of criminal law" who reads petitioner's confession "will readily conclude" that it was not coerced, but is true and was properly submitted to the jury (358 Pa. 350, 355; R. 313). It was stated that "Anyone believing Turner's later assertions that he had been coerced into making his incriminating statements about the commission of these murders would be too credulous to be safely entrusted with any part in the realistic work of administering the criminal law with justice both to the accused and to society" (358 Pa. 350, 363; R. 319, 320).

On the problem of prolonged detention the court said there was nothing wrong under the Pennsylvania Constitution or statutes in holding a "murderer" five days in order to question him (358 Pa. 350, 356; R. 313, 314) but even if it were "technically" wrong, "it does not follow that under the American constitutional system society must be more grossly wronged by having the prisoner turned

loose upon it after he has confessed his guilt" (358 Pa. 350, 367; R. 324).

The question of right to counsel was treated by the court in a footnote in which it was said that the Pennsylvania statutes requiring counsel to be appointed at trial had never been interpreted to furnish counsel as soon as an accused is taken into custody.

The right to counsel under the Pennsylvania Constitution and the Fourteenth Amendment is not mentioned nor is the question of constitutional privilege against self-incrimination or of constitutional right to confront witnesses. The evidence obtained at the alleged reenactment of the crime is accepted by the court as a further evidence of guilt (358 Pa. 350, 368; R. 323) and no mention whatever is made of the asserted violation of due process arising from the police holding petitioner and his purported confederates for another four days after their commitment by the magistrate, making a total of nine days in all that they were held incommunicado.

Petitioner has throughout the trial and appeal asserted and sought to protect his constitutional rights under the Fourteenth Amendment. When the Commonwealth first attempted to have petitioner's alleged confession read in evidence an objection was made (R. 35) which was immediately overruled. Thereupon counsel attempted to bring to the court's attention the reasons for the objection and the rulings relied upon in support thereof (R. 35). The trial judge cut off such a statement, however, by announcing, "I am ruling here and I have made my ruling" (R. 35). When the District Attorney then asked to have the alleged confession of Jasper Johnson read in evidence counsel renewed the attempt to state for the record the reasons for petitioner's objection (R. 42) but the trial judge again stopped this by stating, "That is purely argumentative" (R. 42). An exception, however, was granted (R. 42).

The court having thus indicated the manner in which it desired objection to be noted, counsel thereafter did not persist in attempting to state in detail all the reasons relied upon but simply made his objection and was granted exception to the admissibility of the purported confession of Clarence Lofton (R. 47). As to the admission of the testimony elicited at the magistrate's hearing, it was pointed out to the trial judge that petitioner's statement was obtained in violation of his constitutional privilege against self-incrimination (R. 68), and repeated objections were made to the receipt of all this line of evidence (R. 78, 82, 83, 85). Exception was noted to all of these matters and to the admission of the testimony relating to the so-called reenactment of the crime (R. 110).

At the close of the case in the trial court, petitioner presented numerous points for charge, reiterating his contentions that the alleged confessions were obtained in a coercive situation and hence violated his constitutional rights (R. 208-209, 211), that the testimony elicited at the magistrate's hearing and subsequently introduced at the trial was secured in violation of his constitutional privilege against self-incrimination (R. 209-210), that the use of the alleged confessions of Johnson and Lofton violated petitioner's constitutional right to confront the witnesses against him (R. 210), and pointing out that petitioner had been denied a prompt preliminary hearing, the assistance of counsel before the magistrate and had been improperly detained by the police following his commitment without bail (R. 212). All of petitioner's requests for charge were refused by the trial judge (R. 203-205).

After the jury's verdict of guilty, petitioner moved for a new trial and assigned as error the admission of the alleged confessions, the testimony secured at the magistrate's hearing and at the so-called reenactment of the crime (R. 213-264), thereby raising again the substance

of his contentions. The constitutional questions now raised were then argued at length and, as has been described above, the court en banc divided on the problems in its majority (R. 264) and dissenting (R. 293) opinions. There followed an appeal to the Supreme Court of Pennsylvania in which the assignments of errors was repeated (R. 298) and, pursuant to the rules of that court, there was included in petitioner's brief a "Statement of Questions Involved", which again set forth the federal questions in the case upon which grounds the appeal was based (R. 297). The Supreme Court of Pennsylvania, as related above, affirmed the judgment and sentence (358 Pa. 350; R. 309).

ARGUMENT

Petitioner contends that the due process clause of the Fourteenth Amendment is violated when the police take into custody a person accused of murder and hold him incommunicado for nine days, question him intensively in groups and in relays for hours at a time day and night, move him from one police station to another, delay his preliminary hearing before a magistrate for five days for the admitted purpose of extracting a confession from him, and then, after his commitment to the county prison by the magistrate, hold him without court order for another four days so as to stage a reenactment of the crime for the admitted purpose of getting further evidence against him. When there are added to these undisputed facts the further admitted facts that at the magistrate's hearing, when it was finally held, the indigent accused was not furnished counsel, was not advised of his right to counsel or his right to cross-examine witnesses against him and was denied his privilege against self-incrimination, then petitioner submits all the evidence obtained under these circumstances is inadmissible at the trial of the murder indictment.

Despite objection, the confession, the testimony of the magistrate's hearing and of the reenactment were all admitted at petitioner's trial, and it is now submitted that "Due process of law, preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death" (*Chambers* v. *Florida*, 309 U. S. 227, 288; *White* v. *Texas*, 317 U. S. 530, 533).

I

The Admission in Evidence of Petitioner's Alleged Confession Violated His Rights under the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

Both the court en banc (R. 279) and the Supreme Court of Pennsylvania (358 Pa. 350, 354, 361, 362) took the view that the voluntary character of the confessions turned on a disputed issue of fact and hence that was for the jury to determine.[4] Both courts, however, simply ignored and failed even to mention the argument petitioner has advanced on the basis of facts which are not in dispute at all but which are, on the contrary, admitted by the police themselves. We believe that a mere recital of those facts, as set forth above, makes it self-evident that the course of conduct pursued by the police was "so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear" (*Ashcraft* v. *Tennessee*, supra at p. 152).

[4] The only dispute was about the use of *physical violence*, which petitioner asserted and the police denied, and, of course, "such disputes . . . are an inescapable consequence of secret inquisitorial practices. And always evidence concerning the inner details of secret inquisitions is weighted against an accused, particularly where, as here, he is charged with a brutal crime . . . ." (*Ashcraft* v. *Tennessee*, 322 U. S. 143, 152).

The principle we here invoke is that stated by this Court in *Lyons* v. *Oklahoma*, 322 U. S. 596, 602:

> "When conceded facts exist which are irreconcilable with such mental freedom, regardless of the contrary conclusions of the triers of fact, whether judge or jury, this Court cannot avoid responsibility for such injustice by leaving the burden of adjudication solely in other hands."

And, as was said in *Lisenba* v. *California*, 314 U. S. 219, 240:

> ". . . when a prisoner held incommunicado is subjected to questioning by officers for long periods and deprived of the advice of counsel, we shall scrutinize the record with care to determine whether, by use of his confession, he is deprived of his liberty or life through tyrannical or oppressive means."

(See also *Pierre* v. *Louisiana*, 306 U. S. 354, 358; *Chambers* v. *Florida*, supra at p. 227; *Ward* v. *Texas*, 316 U. S. 547, 550; *Ashcraft* v. *Tennessee*, supra at pp. 147, 148; *Malinski* v. *New York*, 324 U. S. 401, 404; *Haley* v. *Ohio*, 332 U. S. 596, 599).

We believe that the independent examination, which this Court has said is its duty to make, will demonstrate from the undisputed evidence "that force or coercion was used to exact the confession" (*Haley* v. *Ohio*, supra) and hence that petitioner's conviction cannot stand. The admissions of the police themselves bring this case squarely within the host of decisions, the principles of which are summarized in *McNabb* v. *United States*, 318 U. S. 322, 340:

> "* * * this Court has, on Constitutional grounds, set aside convictions, both in the Federal and State Courts, which were based upon confessions *secured by protracted and repeated questioning of ignorant and untutored persons*, in whose minds the power of officers was greatly magnified: Lisenba v. California,

314 U. S. 219, 239, 240, 86 L. Ed. 166, 181, 182, 62 S. Ct. 280, or *'who have been unlawfully held incommunicado without advice of friends or counsel'*: Ward *v.* Texas, 316 U. S. 547, 555, 86 L. Ed. 1663, 1667, 62 S. Ct. 1139; and see Brown *v.* Mississippi, 297 U. S. 278, 80 L. Ed. 682, 56 S. Ct. 461; Chambers *v.* Florida, 309 U. S. 227, 84 L. Ed. 716, 60 S. Ct. 472; Canty *v.* Alabama, 309 U. S. 629, 84 L. Ed. 988, 60 S. Ct. 612; White *v.* Texas, 310 U. S. 530, 84 L. Ed. 1342, 60 S. Ct. 1032; Lomax *v.* Texas, 313 U. S. 544, 85 L. Ed. 1511, 61 S. Ct. 956; Vernon *v.* Alabama, 313 U. S. 547, 85 L. Ed. 1513, 61 S. Ct. 1092." (Italics supplied.)

See also *Ashcraft* v. *Tennessee*, *Lyons* v. *Oklahoma*, *Malinski* v. *New York*, and *Haley* v. *Ohio*, supra.

Thus, even if we lay aside the controverted evidence on physical mistreatment, as was done in *Ward* v. *Texas*, *Ashcraft* v. *Tennessee*, *Malinski* v. *New York* and *Haley* v. *Ohio*, the record in the present case reveals the deliberate use of almost every reprehensible and indefensible practice which this Court has condemned as repugnant to the Constitution. In outlawing these "easy but self-defeating ways" of law-enforcement (*McNabb* v. *United States*, supra at p. 344), the presence of anyone of these grounds has been sufficient cause for reversing convictions and, as in *Ward* v. *Texas*, supra at p. 555, "All of them are to be found in this case."

An essential part of the procedure followed by the police in order to procure a confession from petitioner was the denial of a prompt preliminary hearing before a magistrate. It will be recalled that the police admit that the hearing was delayed five days because "We had a lot of questioning to do" (R. 26), because "He did not give the answers the right way" (R. 26), because "He did not give us the answers that somebody else told us he could give" (R. 26), because there was "a lot of trouble trying to straighten out the details" (R. 89), because "We ques-

tioned him from that time (June 3) until he made a statement" (R. 74). Such a course of conduct is characterized bluntly by Chief Judge Lehman of New York as quoted in *Malinski* v. *New York*, 324 U. S. 401, 417, n. 1:

> "The conclusion is inescapable that the police delayed the arraignment of the defendant 'for the purpose of subjecting him to an inquisition impossible thereafter'."

Were this a case arising in the federal courts there could be no doubt that the conviction could not stand against the rule of *McNab* v. *United States*, supra, and *United States* v. *Mitchell*, 322 U. S. 65, which forbids "Inexcusable detention for the purpose of illegally extracting evidence from an accused, and the successful extraction of such inculpatory statements by continuous questioning for many hours under psychological pressure." The Supreme Court of Pennsylvania, however, has rejected for Pennsylvania the authority and applicability of the *McNabb* rule on the ground that it applies only to proceedings in the federal courts (358 Pa. 350, 358). Yet in at least two cases arising from state courts under the Fourteenth Amendment, *Ashcraft* v. *Tennessee* and *Malinski* v. *New York*,[3] supra, this Court has reversed convictions obtained by the use of confessions extracted after prolonged detention of the accused, and, even more recently, in *Haley* v. *Ohio*, supra, there has been a further strong intimation that the question of unreasonably long detention is a matter for consideration under the Due Process clause.

There is certainly considerable support for the belief that the right to a prompt preliminary hearing is such an "impressively pervasive requirement of criminal procedure"

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[3] In the *Ashcraft* case the accused was detained by the police for 36 hours before being granted a preliminary hearing. In the *Malinski* case, a confession obtained after ten hours detention was held inadmissible.

(*McNabb* v. *United States*, *supra* at p. 343) that it must be considered among "the fundamental principles of liberty and justice which lie at the base of our civil and political institutions, which not infrequently are designated as 'the law of the land'" (*Herbert* v. *Louisiana*, 272 U. S. 312, 316; *Snyder* v. *Massachusetts*, 291 U. S. 97, 105; *Mooney* v. *Holohan*, 294 U. S. 103, 112; *Buchalter* v. *New York*, 319 U. S. 427, 429; *Bute* v. *Illinois*, — U. S. —, 16 Law Week 4313, 4315). See for instance in addition to the illuminating discussion in the *McNabb* case, Section 35 of the Code of Criminal Procedure (1930) prepared by the American Law Institute, and the Commentaries thereto; Report on Lawlessness in Law Enforcement (1931) by the National Commission on Law Observance and Enforcement (the Wickersham Report), pp. 31, 33, 34;[6] McCormick, "Some Problems and Developments in the Admissibility of Confessions", 24 Texas L. Rev. 239, 243; *Schabert* v. *Minnesota*, 218 Minn. 1, 6, 15 N. W. 2d 585, 587, 588; *Runnels* v. *United States*, 138 F. 2d 346, 347.

Even if such a conclusion unduly extends the implications of this Court's decisions and "the effect of a mere denial of a prompt examining trial is a matter of state, not of federal law" (*Lyons* v. *Oklahoma*, 322 U. S. 596, 597 n. 2), still it is clear that the fact of prolonged detention will be considered as affecting the voluntary nature of a confession (*Lyons* v. *Oklahoma*, *Haley* v. *Ohio*, *supra*). And it is believed there would be no dissent from the view expressed by Chief Judge Lehman quoted with approval in *Malinski* v. *New York*, 324 U. S. 401, 417, n. 1:

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[6] The Wickersham Report, pp. 113-115, also reveals a long-standing practice among the Philadelphia police to detain an accused in "cold-storage." To the same effect is the Report of the Crimes Survey Committee of the Law Association of Philadelphia (1926) pp. 466-468. Attention is also invited to a speech quoted in the Appendix hereto, *infra*, p. 49, by Lemuel B. Schofield, Esquire, to the Philadelphia Bar Association on December 15, 1939.

"There can be no fair trial of the issue whether the confession is voluntary where the jury is not properly informed that the detention was unlawful and that they must take that fact into consideration."

It is a paradox that in the present case the trial judge specifically refused to charge the jury on the question of detention (R. 204, 212) and yet thereafter, writing on behalf of a majority of the court en banc in rejecting a motion for new trial, specifically recognized that "It is one of the elements to be considered" (R. 268, 269). Equally puzzling is the fact that the Supreme Court of Pennsylvania also took the view that the jury "acting under proper instructions" (358 Pa. 350, 365; R. 322) is the tribunal to pass on the voluntariness of a confession but failed to recognize the fact that the jury was denied instruction on detention.

We are driven to the conclusion that both courts were strongly moved by an assumption of the conclusion that petitioner is guilty. Thus, in refusing the point for charge, the trial judge commented (R. 204):

"You do not presume to think if they were wrong in delaying the hearing four or five days that it would affect the question of whether he is or is not guilty?"

And the Supreme Court of Pennsylvania said (358 Pa. 350, 356; R. 313, 314):

"There is nothing in the constitution or the statutes of Pennsylvania or in the decisions and opinions of this court during the two and a quarter centuries of its existence, requiring that *a convicted murderer* be turned loose merely because he has not been taken before a magistrate immediately after his arrest or because he was held five days in jail and interrogated a few hours each day without being given an opportunity to consult with counsel or with friends." (Italics supplied.)

Again the court said (358 Pa. 350, 367; R. 324):

> "Even if it should be decided in a given case that a prisoner had been technically wronged by an officer's refusal to take him before a committing magistrate almost immediately after his arrest for a felony, it does not follow that under the American constitutional system society must be more grossly wronged by having the prisoner turned loose upon it after he has confessed his guilt. Just as in morals 'two wrongs do not make a right', so in law committing a wrong against an accused cannot be righted by committing a wrong against society."

This process of reasoning ignores, of course, the entire question of whether the confession is a voluntary one or not, and would lead to the startling conclusion that so long as a confession is "true" and the accused is "guilty", it is immaterial how the confession and the conviction are secured. Such a view is contrary to the principle, enunciated in *Lisenba* v. *California*, 314 U. S. 219, 236, that:

> "The aim of the requirement of due process is not to exclude presumptively false evidence but to prevent fundamental unfairness in the use of evidence, whether true or false."

Although the Supreme Court of Pensylvania fails to refer to it, there is authority in that state which accepts the "impressively pervasive" view of the requirement of a prompt preliminary hearing. Indeed, in the survey of the state statutes made in *McNabb* v. *United States*, 318 U. S. 332, 342, n. 7, Pennsylvania is recognized as having "similar legislation, requiring that arrested persons be promptly taken before a committing authority." The statutes thus refered to are the Act of March 31, 1860, P. L. 427, §3, as amended by the Act of May 2, 1899, P. L. 173, § 1, 19 Purdon's §3; and the Act of April 23, 1909, P. L. 141, § 1, 19 Purdon's § 4. These acts are set out in the Appendix.

infra, p. 46, along with a third statute which is peculiarly applicable to the present case since it sets forth the duties of the Philadelphia police. The Act of April 20, 1869, P. L. 1187, § 1, 53 Purdon's § 6858, provides, in the familiar terms of such legislation, that officers making arrests in Philadelphia shall take the person arrested for a hearing to the nearest magistrate. The penalty for failure to comply with the act is a fine of fifty dollars and dismissal from office. Although no time is stated in the act, it is nevertheless implicit in such statutes that the arresting officer must act promptly and without unnecessary delay (*McNabb* v. *United States*, *Runnels* v. *United States*, *Schabert* v. *Minnesota*, *supra*).[7]

These Pennsylvania statutes appear not to have been construed but the Supreme Court of Pennsylvania itself recognized the principle involved more than a half a century ago. *Burk* v. *Howley*, 179 Pa. 539, 36 Atl. 327, was an action for damages for false imprisonment brought by a woman arrested without a warrant on a charge of theft and held by the police for eight days. In affirming a judgment for substantial damages the Supreme Court of Pennsylvania commented on the detention (p. 550):

> ". . . (the) purpose was to extort a confession of guilt, a revival in somewhat milder form of the rack and thumbscrew process to establish crime and just as flagrantly unlawful . . . The court (below) said that while an arrest, on an exigency where reasonable grounds of suspicion existed, might be made, it was the duty of the person or officer making the arrest to take the accused before a magistrate for formal accusation and hearing . . . In this there was no error . . .

[7] In the speech cited in footnote 6 and quoted in the Appendix, *infra*, p. 49, Mr. Schofield, a former First Assistant District Attorney and Director of Public Safety of Philadelphia, referring to the Act of April 20, 1869, P.L. 1187, states: "I doubt if there is a statute on our books which is more consistently violated. Were it strictly enforced half the Philadelphia police force would be out of employment. . . ."

> But why detain her in a cell for more than a week? Obviously because there were no reasonable grounds for suspicion on which to base an information. (The) whole subsequent conduct shows that the imprisonment was prompted for the purpose of extorting an admission, without which there was no reasonable ground to suspect guilt. Clearly, if the exigency called for a sudden arrest without warrant, no such exigency exists for the eight days following, every hour of which was an illegal detention."

Petitioner contends that his illegal detention coupled with the circumstances under which his alleged confession was obtained was so inherently coercive that the mandate of the Due Process clause requires that his conviction be reversed. This conclusion, it is submitted, is inescapable "even though without the confession there might have been enough evidence for submission to the jury. *Malinski* v. *New York*, *supra*, p. 404, and cases cited". (*Haley* v. *Ohio*, 332 U. S. 596, 599, 606).

II

The Admission in Evidence of the Alleged Confessions and Statements of Petitioner's Purported Confederates Violated His Rights under the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

What has gone before is equally applicable to the alleged confessions of petitioner's purported confederates, Johnson and Lofton. Lofton was arrested by the police on May 24, 1946 (R. 22), Johnson on June 3, 1946 (R. 22), and both were held along with petitioner and subjected to the same "hydraulic" process by the police (R. 89, 90, 94, 184-187). Moreover, since all three men signed all three "confessions", both the lower court (R. 279-281) and the Supreme Court of Pennsylvania (358 Pa. 350, 368) treated the three

documents as petitioner's confessions and, therefore, admissible as such. Conversely it would follow that the exclusion of one would necessitate the exclusion of all three.

The peculiar vice in the use of the alleged confessions of Johnson and Lofton lies in the fact that they were never called personally as witnesses by the Commonwealth although they were available and were actually produced in court by the District Attorney for identification purposes (R. 175). In this fashion petitioner was deprived of his opportunity and right to confront and cross-examine the witnesses against him (see Petitioner's Point for Charge No. 11, R. 210). This grievous error was greatly aggravated by the further fact that the trial judge received, over objection and exception, a report of the testimony Johnson and Lofton gave at the magistrate's hearing (R. 56, 57, 78, 81, 85, 110) when petitioner did not have and was not advised of his right to counsel or of his right to cross-examine the witnesses against him.

This ruling, which the Supreme Court of Pennsylvania tacitly approves, is flatly contradictory to the only other decision in Pennsylvania which has ever considered the problem. *Commonwealth* v. *Lenousky*, 206 Pa. 277, 55 Atl. 977, cited with approval in *Commonwealth* v. *Westwood*, 324 Pa. 289, 303, 188 Atl. 304, 310, holds, on what was referred to as "a question of grave importance in the criminal law," that on the trial of an indictment for murder, the testimony of a witness, who was absent at the trial but who testified at the preliminary hearing, is inadmissible when the accused was not represented by counsel before the magistrate and was not informed of his right to cross-examine the witnesses against him. The rationale behind the decision is obviously the right of an accused to confront the witnesses against him which is guaranteed by Article 1, §9 of the Constitution of Pennsylvania and which has been assumed to be "reinforced by the Fourteenth Amend-

ment" (*Snyder* v. *Massachusetts*, 291 U. S. 97, 106; *Re Oliver*, U. S. , 92 L. Ed. 491, 500). We submit, therefore, that in denying petitioner his right in this respect the Fourteenth Amendment was violated.

III

The Due Process Clause of the Fourteenth Amendment of the Constitution of the United States Required That Petitioner Be Furnished Counsel at the Preliminary Hearing of a Capital Case.

This being a capital case involving an indigent accused, it comes directly within the requirement reiterated most recently in *Bute* v. *Illinois*, U. S. , 16 Law Week, 4313, 4323, in which it was said:

> ". . . this Court repeatedly has held that failure to appoint counsel to assist a defendant . . . where charged with a capital crime is a violation of due process of law under the Fourteenth Amendment. *Carter v. Illinois*, 329 U. S. 173, *Hawk v. Olson*, 326 U. S. 271; *Tompkins v. Missouri*, 323 U. S. 485; *Williams v. Kaiser*, 323 U. S. 471; *Powell v. Alabama*, 287 U. S. 45; *Moore v. Dempsey*, 261 U. S. 86. See also, *DeMeerleer v. Michigan*, 329 U. S. 663 (convicted of first degree murder and sentenced to life imprisonment).

The "classic statement" of the requirement is that an accused in a capital case "requires the guiding hand of counsel at every step in the proceedings against him" (*Powell* v. *Alabama*, *supra*, at p. 69), and the simple question here is whether a preliminary hearing before a magistrate is a "step in the proceedings against him." Just to put the question would seem sufficient to bring an affirmative answer and there can be no possible doubt that such is the case in Pennsylvania where the Constitution provides,

in Article V, Sec. 1, that the judicial power of the State shall be vested in magistrates' courts as well as in other courts. Furthermore, Article V, Sec. 12 of the Pennsylvania Constitution establishes a system of minor courts for Philadelphia County.

The Supreme Court of Pennsylvania has had occasion to consider the question of whether the magistrates' courts are part of the judicial system, and, in *McNair's Petition*, 324 Pa. 48, 53, 187 Atl. 498, 501, it was said:

> "These courts are of a subordinate nature and limited jurisdiction but their importance in our system of jurisprudence, as well as the English system in which they had their origin, cannot be ignored. Within the sphere of their powers, they have all the attributes of legally constituted courts of justice and are independent of any other tribunal except insofar as their action is reviewable on appeal . . . ."

This Court has not, we believe, been asked before to pass upon the specific question of the right of an accused in a capital case to be furnished counsel, whether he requests it or not, at a preliminary hearing. That the right extends this far, has, however, been expressly ruled in *Wood* v. *United States*, 128 F. 2d 265, the opinion in which was written by Mr. Justice Rutledge when sitting on the United States Court of Appeals for the District of Columbia. It is there said that the preliminary hearing "performs a judicial though limited function" and is "a stage of 'the proceedings against' the accused" (p. 275) and that "the accused is entitled to have counsel at the hearing" (p. 271).

The *Wood* case has been cited with approval in *Ashcraft* v. *Tennessee*, 322 U. S. 143, 154 n. 10, and in *Edwards* v. *United States*, 139 F. 2d 365, 367, 368, cert. denied 321 U. S. 769. Compare *Canizio* v. *New York*, 327 U. S. 82, 91, and see *contra*, *Burrall* v. *Johnson*, 141 F. 2d 230, cert. denied 325 U. S. 887. It is also supported by Section 39 of the

Official Draft of the Code of Criminal Procedure (1930) adopted by the American Law Institute, and by a majority of the state decisions referred to in the Commentary thereto.

It should be added that, generally speaking, those state decisions which have denied the right,[8] turn upon two grounds: the fact that a preliminary hearing is not a "trial" within the meaning of the particular state constitution, or that a magistrate has no power to appoint counsel. It has been pointed out above that in Pennsylvania the magistrate's hearing is made by the Constitution a part of the judicial process and that the office of magistrate is a judicial one. It follows necessarily, then, that a preliminary hearing is a "trial" and that a magistrate in his judicial capacity has an inherent right to appoint counsel for a person appearing before him charged with a capital offense.

"Every court", it was said in *Betts* v. *Brady*, 316 U. S. 455, 471, 472, "has power, if it deems proper, to appoint

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[8] *Withers* v. *States*, 36 Ala. 252, 264 (1860); *Blanks* v. *State*, 30 Ala. App. 519, 8 So. 2d 450 (1942); *State* v. *Calkins*, 63 Idaho 314, 120 P. 2d 253 (1941); *Milller* v. *State*, 29 Neb. 437, 441 (1870); *Roberts* v. *State*, 145 Neb. 658, 17 N. W. 2d 666 (1945); *State* v. *Murphy*, 87 N.J.L. 515, 94 Atl. 640 (1915); *Lambus* v. *Kaiser*, 352 Mo. 122, 176 S. W. 2d 494 (1943); *Skiba* v. *Kaiser*, 352 Mo. 424, 178 S. W. 2d 373 (1944); *State* v. *Graves*, 352 Mo. 1102, 182 S. W. 2d 46 (1944); *State* v. *Crank*, 105 Utah 332, 142 P. 2d 178 (1943). Compare also *People* v. *Brooks*, 72 Cal. App. 2d 657, 165 P. 2d 51 (1946).

Cases in state courts deciding or intimating that the constitutional right to counsel extends to the preliminary hearing are: *Phillips* v. *State*, 162 Ark. 541, 547, 258 S. W. 403, 405 (1924); *People* v. *Elliott*, 80 Cal. 296, 299, 22 P. 207, 209 (1889); *People* v. *Napthaly*, 105 Cal. 641, 39 P. 29 (1895); *Batchelor* v. *State*, 189 Ind. 69, 76, 125 N. E. 773, 776 (1919); *State* v. *Moore*, 61 Kan. 732, 734, 60 P. 748, 749 (1900); *Crebs* v. *Hudspeth*, 160 Kan. 650, 164 P. 2d 338 (1946), cert. denied 328 U. S. 857; *People* v. *Moore*, 62 Mich. 496, 502, 29 N. W. 80, 82 (1896); *Ex parte Bedard*, 106 Mo. 616, 622, 17 S. W. 693, 694 (1891); *People* v. *Risley*, 66 How. Pr. 67 (N. Y. 1883); *People* v. *Fuller*, 68 N.Y.S. 742 (1901); *Harris* v. *Rolette County*, 16 N. D. 204, 112 N. W. 971 (1907); *Polk* v. *State*, 126 Okl. Cr. 283, 224 P. 194 (1924); cf. *People* v. *Johnson*, 2 Wheeler Cr. C. 361 (N. Y. 1824), decided before the Bill of Rights incorporating the right to counsel was added by the New York Constitution of 1846.

counsel where that course seems to be required in the interest of fairness." And the existence of this power is recognized in Pennsylvania (*Commonwealth* v. *Richards*, 111 Pa. Super. 124, 129, 169 Atl. 464, 465; *Commonwealth ex Rel. Schultz* v. *Smith*, 139 Pa. Super. 357, 362, 11 A. 2d 656, 658).

In the present case the Supreme Court of Pennsylvania has dismissed this vital *constitutional* question in a brief footnote which observes merely that the Pennsylvania *statutes* speak only in terms of assigning counsel at trial. But, as pointed out in *Wood* v. *United States supra* at p. 271:

> "The aid of counsel in preparation would be farcical if the case could be foreclosed by preliminary inquisition which would squeeze out conviction or prejudice by means unconstitutional if used at trial . . ."

It is readily apparent that petitioner suffered great prejudice because he was without counsel at the magistrate's hearing. In the first place, he, a young, poor, uneducated negro who had only attended school up to the sixth grade, was being confronted with the gravest of all felony charges, murder. This is the typical factual situation which has led to the formulation of the rule providing counsel, since it flies in the face of reality to suppose that an uneducated layman could alone fairly meet such an accusation (*Powell* v. *Alabama*, *Williams* v. *Kaiser*, *Tompkins* v. *Missouri*, *supra*). Moreover, the circumstance of petitioner's arrest and detention are properly to be considered in this regard, since coercive practices may in themselves create a need for the assistance of counsel, quite apart from the personal capacities of the accused or the nature of the charge made against him (*cf. Smith* v. *O'Grady*, 312 U. S. 329; *Ex Parte Hawk*, 321 U. S. 114).

Specifically, petitioner was prejudiced by being without counsel at the magistrate's hearing in that he was thereby

deprived of his right to cross-examine the witnesses against him. The magnitude of this lost opportunity is made clear when it is remembered that the only persons supposedly having actual knowledge of petitioner's alleged participation in the crime charged were Johnson and Lofton, and the only time they appeared in person as witnesses against petitioner was at the preliminary hearing. Therefore, by not being informed of his right to cross-examine them at that time and by not being furnished counsel who would have been able to secure this right for him, petitioner was unfairly deprived of the only chance he has ever had to elicit the truth from these witnesses. Similarly, petitioner was deprived of the incalculable benefit of being able to cross-examine the police contemporaneously with the events of which he now complains. It is certainly not inconceivable that an interrogation at that time would have adduced even more details of the coercive practices adopted by the police than are now in the present record.

Moreover, the assistance of counsel at that stage in the proceedings against him would have enabled petitioner to make an intelligent choice between claiming his constitutional privilege to remain silent and taking the stand to testify in his own behalf. If petitioner had chosen to exercise his privilege, the assistance of counsel would have prevented him from being compelled to testify against himself which, it is submitted, he was made to do. On the other hand, the assistance of counsel would have enabled him, had it been so decided, to take the stand at the preliminary hearing and then and there repudiate the confession and, contemporaneously with the event, tell his story of coercion and violence and exhibit his bruises to the magistrate.

Finally and equally important with the foregoing, the assignment of counsel at that stage would have protected petitioner from being held improperly and illegally by the police for another four days in order to secure more "evi-

dence in our homicide case" (R. 97) after he had been committed without bail by the magistrate. (See infra Point V, p. 38.)

In view of all these facts it cannot be doubted that "natural, inherent, and fundamental principles of fairness" required the appointment of counsel for petitioner at the preliminary hearing before the magistrate (*Betts* v. *Brady*, 316 U. S. 455, 464; see also the dissenting opinion in *Bute* v. *Illinois*, *supra* at p. 4324).

IV

The Admission in Evidence of Statements Elicited at the Magistrate's Hearing Violated Petitioner's Rights under the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

In *Wood* v. *United States*, *supra*, at pp. 271, 276, it was observed that the right to counsel and the privilege against self-incrimination have "a substantive affinity" and are "co-extensive in time". The present case is a clear-cut example of how intimately the two constitutional safeguards are linked and demonstrates that to insure the preservation of the latter the former must be granted.

There was introduced at the trial, over objection and exception, as has been said, the testimony given by Johnson, Lofton and petitioner at the magistrate's hearing. This was done in an unusual way in that the District Attorney read to various Commonwealth witnesses page after page of the earlier transcript and then asked whether the witness recalled those questions and answers from the hearing which had been held almost four months before. In each instance the witness had an apparently exact and complete recollection.

It is clear from this testimony, and indeed it has never been denied in the case, that the accused were not repre-

sented by counsel at the magistrate's hearing, were not informed of their right to counsel and were not advised of their right to cross-examine. The District Attorney paid brief lip service to the constitutional requirements by informing the three men at the beginning of the hearing that they did not have to testify,[9] and yet after Detective Kelly, Johnson and Lofton had testified, the District Attorney, without further ado, caused petitioner to be sworn (R. 57) and questioned him as follows (R. 58):

> "Q. *Do you want to say anything to his Honor?*
> A. *No, sir.*
> Q. *Can you add anything?*
> A. *No, sir.*
> Q. *You don't want to add anything?* Do you agree with the testimony that these men have given in court?"

Since the District Attorney thus persisted in questioning petitioner and since the magistrate failed to intervene to prevent this interrogation, despite the unequivocal nature of petitioner's desire and attempt to claim his privilege he was thus unconstitutionally compelled to testify. Actually the magistrate's hearing became nothing more than a continuation of the same coercive process to which petitioner had already been subjected for five days, and served only further to "break" petitioner's will. The police had kept him on the grill before because "he did not give the answers the right way" (R. 26) and now, with no one around except the same detectives who had been his inquisitors (R. 145), the authorities went through the form of advising him of his constitutional privilege only to thrust aside delib-

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[9] It was said in *Haley* v. *Ohio*, 332 U. S. 596, 601: ". . . we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain.

erately his effort to exercise that privilege. Apparently the District Attorney also felt that petitioner's "No, sir" was not "giving the answers the right way."

It cannot be doubted that had petitioner been represented at the time his counsel could have secured to him his constitutional immunity. In fact, the court en banc has said that he could have successfully claimed his privilege had he remained silent (R. 286). Apparently a flat negative reply to the question, "Do you want to say anything to his Honor?", is insufficient, but it is a travesty, indeed, to deny counsel to an indigent accused and then hold him to the niceties of phraseology that a skilled practioner might use.

This is "squeezing out conviction . . . by means unconstitutional if used at trial" and, as was said in *Wood v. United States, supra* at p. 376:

> "That the hearing in a magistrate's proceeding does not deprive it of judicial quality. Neither does it invest the court with power of inquiry or freedom from constitutional restrictions greater than the trial court possesses."

We have already set forth our view that the testimony given by Johnson and Lofton at the preliminary hearing was inadmissible at petitioner's trial (supra, Point II, pp. 28-30). We here submit that the remaining bit of testimony from the magistrate's hearing, that of petitioner himself, is also inadmissible since it is violative of his constitutional privilege against self-incrimination.

V

The Admission in Evidence of Testimony Concerning the Purported Reenactment of the Crime Violated the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

Even after petitioner had been put through the travesty of the magistrate's hearing on June 7, 1946 and after he

had been committed without bail to the county prison he was granted no surcease from the continuing, coercive methods of the police. It is admitted that they held him, without court order and still incommunicado, for another four days and that he was not delivered to the relative sanctuary of prison till June 12 (R. 137-138, 180). The purpose behind this further detention was to subject petitioner and his alleged confederates to a so-called reenactment of the crime.

If the police are to be believed, petitioner, Johnson and Lofton had voluntarily made a clean breast of everything by June 8, for, supposedly, signed written confessions had then been obtained after five days of questioning and "ironing out the details" (R. 90). In addition, full "confessions" had been obtained in open court before the magistrate on June 8. And still the police were not satisfied. There had to be a reenactment of the crime because, as Sgt. Riccardi admitted, "it is a matter of evidence in our homicide case" (R. 97).

These facts bring at once to mind the very similar situation in *Malinski* v. *New York*, 324 U. S. 401, in which this Court reversed a conviction because it had been obtained by the use of evidence secured in violation of the Due Process clause. The significance of that decision for the present case is particularly emphasized in the opinion of Mr. Justice Rutledge, concurring in the reversal as to Malinski (pp. 422-428). In language that is peculiarly relevant to the plight of the present petitioner, it is asked, "Why was he detained illegally for three days and four nights after he admittedly had told 'everything'?" (p. 424). The answer, of course, is that the police were using "a pattern typical of 'third degree' method" (p. 426) in which everything "was checked, elaborated, verified and distilled" (p. 427). Petitioner, like Malinski, "knew that he was 'on the grill' and

would continue so until he made whatever statement might satisfy the officials who had him in charge" (p. 428).

It would seem self-evident that when petitioner was committed by the magistrate he should have been delivered forthwith to the county prison and that, once there, he could not, without an express court order, have been taken by the police for the reenactment.[10] His rights are not different from those of any other citizen because he is accused of a crime and, as was said in a well-known Pennsylvania lower court decision (*Commonwealth* v. *Brines*, 29 District Rep. 1091), "An accused, but unconvicted prisoner is not to be bundled about the county at the beck and call of every policeman or prosecutor who may wish to see him."

In short, our contention is that the evidence obtained at the reenactment of the crime was inadmissible at the trial because it was obtained in the course of a single, continuing, inquisitorial process that began on June 3 and did not end until June 12. Moreover, we contend that it was improper and illegal for the police to hold petitioner after his commitment by the magistrate, and since, if he had not been present at the reenactment the testimony of what occurred in his absence would be inadmissible, the Commonwealth may not take advantage of the wrongdoing of its officers to make admissible statements procured in the involuntary presence of petitioner.

As was said in *Malinski* v. *New York*, *supra* at pp. 422-423:[11]

> "Whatever may be the rule as to the use of evidence secured by means merely unlawful, in my judgment the Constitution does not tolerate the use of evidence obtained by unconstitutional methods, including coercive

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[10] See Pennsylvania's Habeas Corpus Act of February 18, 1785, 2 Sm. L. 275, § 12, 12 Purdon's § 1887.

[11] Mr. Justice Rutledge's concurring opinion.

ones, to bring about a conviction for crime which is constitutional. The Constitution does not, thus nullify its own terms, setting them at war with each other."

Conclusion

It is important to society that crimes should be solved and the guilty punished, but it is equally important that we secure "conviction of the guilty by methods that commend themselves to a progressive and self-confident society" (*McNabb* v. *United States, supra* at p. 344). The guilt of the present petitioner, if guilty he be, has never been established in accordance with such methods although the Supreme Court of Pennsylvania has approved what was done in this case by an appeal to the expediency said to be demanded by "the unending warfare between the criminal and society" (R. 322). We recall, however, the words of this Court in *Malinski* v. *New York, supra* at p. 418, 419):

> "* * * we must give no ear to the loose talk about society being 'at war with the criminal' if by that it is implied that the decencies of the procedure which have been enshrined in the Constitution must not be too fastidiously insisted upon in the case of wicked people * * * it is intolerable to suggest that we cannot have effective law enforcement without conduct such as this record spreads before us. The notion that we must resort to such methods in order to check crime or to convict criminals has been rejected by those who have had most to do with the criminal law."

The court *en banc* in denying petitioner's motion for new trial said (R. 289):

> "*The charge of the trial court is convincing that this defendant assaulted and murdered two men, and that he is a menace to society.* We believe that he was given a fair trial which in itself is due process. While we believe that every safeguard should be thrown about

a man accused of a capital offense, nevertheless, the courts owe a responsibility to society to safeguard it from the men of the type and character of this defendant." (Italics supplied.)

We believe that this statement is flatly opposed to what this Court has said and done which has been summarized most recently in Mr. Justice Frankfurter's concurring opinion in *Haley v. Ohio*, *supra* at pp. 605, 606:

> "An impressive series of cases in this and other courts admonishes of the temptations to abuse of police endeavors to secure confessions from suspects, through protracted questioning, carried on in secrecy, with the inevitable disquietude and fears police interrogations naturally engender in individuals questioned while held incommunicado, without the aid of counsel and unprotected by the safeguards of a judicial inquiry. Disinterested zeal for the public good does not assure either wisdom or right in the methods it pursues. A report of President Hoover's National Commission of Law Observance and Enforcement gave proof of the fact, unfortunately, that these potentialities of abuse were not the imaginings of mawkish sentimentality, nor their tolerance desirable or necessary for a stern policy against crime. Legislation throughout the country reflects a similar belief that detention for purposes of eliciting confessions through secret, persistent, long-continued interrogation violates sentiments deeply embedded in the feelings of our people. See *McNabb v. United States*, 318 U. S. 332, 342-43."

The shocking practices resorted to and admitted by the police in this case cannot be squared with the decisions of this Court to which we have referred. These decisions show clearly that any one of the grounds here raised is sufficient to require petitioner's conviction to be set aside (*Ward v. Texas*, *supra* at p. 555). When they all occur in one case

the cumulated enormity of the error is such that petitioner cannot with justice be sent to his death. The judgment of the Supreme Court of Pennsylvania should therefore be reversed.

Respectfully submitted,

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APPENDIX

Constitution of the United States Fourteenth Amendment, § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the Commonwealth of Pennsylvania, Article I, § 9

In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land.

Constitution of the Commonwealth of Pennsylvania, Article V, § 1

The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of common pleas, courts of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' courts, magistrates' courts, and in such other courts as the General Assembly may from time to time establish.

Constitution of the Commonwealth of Pennsylvania Article V, § 12

In Philadelphia there shall be established, for each thirty thousand inhabitants, one court, not of record, of police and

civil causes, with jurisdiction not exceeding one hundred dollars; such courts shall be held by magistrates whose term of office shall be six years, and they shall be elected on general ticket at the municipal election, by the qualified voters at large; and in the election of the said magistrates no voter shall vote for more than two-thirds of the number of persons to be elected when more than one are to be chosen; they shall be compensated only by fixed salaries, to be paid by said county; and shall exercise such jurisdiction, civil and criminal, except as herein provided, as is not exercised by aldermen, subject to such changes, not involving an increase of civil jurisdiction or conferring political duties, as may be made by law. In Philadelphia the office of aldermen is abolished.

Act of March 22, 1907, P.L. 31, § 1,
19 Purdon's § 784

Whenever any person, being under indictment, charged with murder, shall make and file with the clerk of the court of quarter sessions, an affidavit, setting forth that he or she is wholly destitute of means to employ counsel and prepare for his or her defense, the judge sitting in the court of oyer and terminer, to whom such affidavit is presented, shall assign to such person counsel, not exceeding two, to represent and defend such person at the trial of the case; and when services are rendered by counsel, in pursuance of such assignment, the judge sitting at the trial of the case may allow such counsel all personal and incidental expenses, upon a sworn statement thereof being filed with the clerk of the court of quarter sessions, and also reasonable compensation for services rendered, not exceeding two hundred dollars for each counsel; which allowance of expenses and compensation shall be a charge upon the county in which the indictment in the action is found, to be paid by the county treasurer, or, where the city and county are coextensive, by the city treasurer, upon the certificate of the judge presiding at the trial of the case: Provided, That in order to be entitled to such expenses and compensation, counsel so assigned must file with the judge, sitting at the trial of the case, an affidavit that he has not, directly or indirectly,

received, nor entered into a contract to receive, any compensation for such services from any source other than herein provided.

Act of March 31, 1860, P.L. 427, § 3, as amended, 19 Purdon's § 3

In case any person against whom a warrant may be issued by any judge or alderman of any city, or justice of the peace of any county in this commonwealth, for any offense there committed, shall escape, go into, reside, or be in any other city or county out of the jurisdiction of the judge, alderman, or justice of the city or county granting such warrant as aforesaid, it shall and may be lawful for the person to whom such warrant was originally directed, or the person having such warrant for execution, to execute the same, and arrest such offender in such city or county, out of the jurisdiction of the alderman, justice or justices granting such warrant aforesaid, and to carry the defendant before any alderman, justice or justices in the city or county in which such offender may be apprehended; and in case the offense for which such offender shall be so apprehended, shall be bailable in law by any alderman or justice of the peace, and such offender shall be willing and ready to give bail for his appearance at the next court of general jail delivery or quarter sessions, to be held in and for the city and county where the offense was committed, such alderman, justice or justices, in the city or county where such offender was apprehended shall and may take such bail for his appearance, in the same manner as the alderman or justices of the peace of the proper city or county might have done and the said alderman, justice or justices of the peace of such other city or county so taking bail, shall deliver or transmit such recognizance and other proceedings to the clerk of the court of general jail delivery or quarter sessions, where such offender is required to appear by virtue of such recognizance, and such recognizance and other proceedings shall be as good and effectual in law as if the same had been entered into, taken or acknowledged in the proper county where the offense was committed, and the same proceedings shall be had therein; and in case the offense for which such

offender shall be apprehended in any other city or county, shall not be bailable in law by an alderman or justice of the peace, or such offender shall not give bail for his appearance at the proper court having cognizance of his crime, to the satisfaction of the alderman or justice before whom he shall be brought, then the constable or other person so apprehending such offender shall carry and convey him before one of the aldermen or justices of the peace of the proper city or county where such offense was committed, there to be dealt with according to law: Provided, That the warrants so as aforesaid issued shall be stamped with the official seal of the officer issuing the same, which seal shall contain the name and official title of said officer and the state and county in which he resides.

Act of April 23, 1909, P. L. 141, § 1, 19 Purdon's, § 4

Sheriffs, constables, members of the State constabulary, or other persons authorized by the laws of this Commonwealth to make arrests, hereafter shall have the use, for a period not to exceed forty-eight hours, of borough and township lockups and city or county prisons, for the detention of prisoners until they can be disposed of according to law, if found necessary by the officer in charge.

Act of April 20, 1869, P. L. 1187, § 1, 53 Purdon's, § 6858

In all cases of arrest made by any police officer or constable of the city of Philadelphia upon any of the streets or highways of any of the cities of this commonwealth, it shall be the duty of the police officer or constable making such arrest to take the person arrested for a hearing to the office of the alderman or magistrate nearest to the place where said arrest has been made, except when the person shall be arrested for intoxication, in which case the intoxicated person shall be taken to the station-house for a hearing before the committing magistrate of the district.

Act of April 20, 1869, P. L. 1187, § 2, 53 Purdon's, § 6859

Any police officer or constable who shall violate the provisions of this act, upon conviction thereof, shall be punished by a fine of not less than fifty dollars and dismissed from office.

Act of Feb. 18, 1785, 2 Sm. L. 275, § 12, 12 Purdon's § 1887

Any person being committed to any prison, or in custody of any officer, sheriff, jailer, keeper or other person, or his under officer or deputy, for any criminal or supposed criminal matter, shall not be removed from the said prison or custody, into any other prison or custody, unless it be by habeas corpus or some other legal writ, or where the prisoner is delivered to the constable or other inferior officer, to be carried to some common jail, or where any person is sent by any judge or justice, having proper authority, to some common workhouse or house of correction, or where the prisoner is removed from one place to another within the same county, in order to his or her trial or discharge in due course of law, or in case of sudden fire or infection or other necessity; and if any person or persons shall, after such commitment as aforesaid, make out, sign, countersign and issue any warrant or warrants for such removal, except as before excepted, then he or they shall forfeit to the prisoner or party grieved two hundred pounds, to be recovered by the prisoner or party grieved, in manner aforesaid.

"Defense in Criminal Cases Prior to Trial", an address delivered by Lemuel B. Schofield, Esq., former First Assistant District Attorney and Director of Public Safety of Philadelphia before the Philadelphia Bar Association, December 15, 1939, (Published in pamphlet form by the Association), page 3.

"The law declares it to be the duty of one who makes an arrest with or without a warrant to take the accused immediately before a magistrate or justice of the peace. As to arrests by constables or police officers of the City of Philadelphia, whether the arrest be within the city or elsewhere in the State, the Act of April 20, 1869, P. L. 1187, sec. 1, 53 PS § 6858, requires that the accused be taken for a hearing to the office of the nearest alderman or magistrate. For failure to comply, the penalty is mandatory—a fine of not less than $50 and dismissal from office. I doubt if there is a statute on our books which is more consistently violated. Were it strictly enforced half the Philadelphia police would

be out of employment, with the resultant reduction in the budget of the Department of Public Safety.

"Persons arrested by warrant usually are taken for a hearing before the magistrate or justice of the peace who issued the warrant; throughout the State those arrested without warrant are taken before a justice of the peace or alderman selected by the enforcement authorities of the particular locality. In Philadelphia, persons arrested without a warrant in the usual course of duty by a patrolman or district detectives are given hearings before the magistrate assigned to the district where the offense was committed and the magistrate holds the hearing in the station house. Where the arrest is by a police officer or detective working from central headquarters, the accused is given a hearing before the magistrate assigned to the central police court in City Hall, though this is not in compliance with the letter of the law.

"The law and the practical necessities of its enforcement are in conflict. Prisoners are not taken before the nearest magistrate nor are they given immediate hearings in many cases. Magistrates are not always on duty and do not sit continually in their offices or in police stations. The police must have some place of security where prisoners may be kept until they can be accorded a hearing. The Act of April 23, 1909, P. L. 141, 19 PS § 4, provides that those authorized to make arrests may use, for a period not exceeding 48 hours, lock-ups and prisons for the detention of persons arrested until they can be disposed of according to law.

"It will be noticed that this statute does not change the duty of the officer to accord the prisoner a hearing at the earliest possible moment, or certainly at the earliest practicable moment. But police are often not ready to proceed as soon as the arrest is made, for reasons which are perfectly obvious and proper from a law enforcement point of view. Witnesses may not be available immediately; it may not be consistent with public safety to disclose at once the nature of the evidence; other participants may be still at large, etc. The result is that sometimes prisoners are kept by the police for days or even weeks, tucked away in some remote station house or moved from place to place

and held incommunicado, with perhaps no one else aware of the arrest until it suits the convenience of the police to have a hearing. This practice has come to be known by the descriptive term, 'cold storage', though the circumstances from the prisoner's point of view are often more consistent with the other end of the thermometer. There is no justification in the law for this practice, whatever may be said in support of it from the practical standpoint."

(8462)

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IN THE

Supreme Court of the United States

October Term, 1948.

No. 107.

AARON TURNER,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

BRIEF FOR RESPONDENT AND APPENDIX.

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RESPONDENT'S STATEMENT OF THE CASE.

The petitioner, Aaron Turner, alias "Treetop", twenty-six years of age, was characterized by the trial judge, his Honor Frank Smith, who observed him and listened to his testimony, as a "smart, clever individual" (R. 276) and not a "poor Negro of a low degree of intelligence". (R. 276) or "the poor, Moronic type of Negro similar to those accused in some other cases. He is a clever, knowing criminal" (R. 282).

About two days before the murders and robberies he reconnoitered or observed the premises of the Ace Broom Factory at 355-57 North 2nd Street, Philadelphia, Pa. Thereafter, on Saturday, afternoon, December 15, 1945, about 5 o'clock, after having conspired with Jasper Johnson, nineteen years of age, alias "James Johnson", alias "Fats", alias "Playboy," and one Clarence Lofton, thirty-four years of age, to commit a robbery, they went to this store and factory when the wholesale district in which they are located is quiet, and this petitioner, armed with a sash weight or pipe, entered the premises through the front door just ahead of Jasper Johnson. Clarence Lofton stood outside and acted as a lookout.

As they entered they met Frank Endres, white, about sixty-two years of age, and petitioner struck him on the head with the sash weight or pipe, knocking him to the floor causing injuries from which he died at the Hahnemann Hospital two days later, December 17, 1945. While he was lying on the floor of the front office of the Ace Broom Factory, Jasper Johnson went through his pockets and extracted therefrom about $175.00. The noise which had been occasioned by the killing of Endres caused Charles Simmons, white, about sixty-four years of age, the proprietor of the Ace Broom Factory, to run into the front room from the rear, and as he did, petitioner hit him with the sash weight or

pipe, knocking him to the floor, and causing injuries from which he died in the Hahnemann Hospital seven days later, December 22, 1945. While Charles Simmons was lying upon the floor, petitioner robbed him of an unknown sum estimated to be from one hundred to several hundreds of dollars. Petitioner and Johnson thereupon ran out, joined the lookout, Clarence Lofton, and proceeded to a barroom at 8th and Callowhill Streets, where the three had several drinks and divided the money.

The lethal blows were inflicted by Petitioner upon Charles Simmons, as well as those upon his employe, Frank Endres, within a few moments of each other, and in the same surrounding circumstances, and they were both robbed.

All three men gave comprehensive and detailed statements of everything each one of them did in the commission of the robberies wherein these two men were killed. The statements were all made in the presence of the others, and each one was signed by the others as witnesses. In Jasper Johnson's statement which petitioner signed and affirmed he is quoted as saying "One of the fellows was no trouble, but the largest one he had to give a hell of a blow" (R. 46).

As a result of police investigation, Clarence Lofton was apprehended on May 24, 1946. This petitioner was implicated and thereafter arrested on June 3, 1946. On the same day Jasper Johnson was apprehended by the police, and their written confessions were started on June 7, 1946, and signed on June 8, 1946.

During the taking of the statements, or just after they had been written down stenographically, the defendants were brought before Magistrate Edward Williams in the Central Station for a hearing. They were all present when Lieut. James Kelly, Chief of the Homicide Division of the Philadelphia Police, testified concerning the commission of the crimes and told Magistrate Williams that they had made statements concerning their participation therein. D. Barlow Burke, Esq., Assistant District Attorney, was present on behalf of the Commonwealth, and he thereupon

addressed the defendants as follows (R. 76). (Appendix, 38a):

"MR. BURKE: Do any of you men want to say anything this morning? I want to warn you in advance that anything you say may be used against you in court, and that you don't have to say anything if you don't want to. I understand, however, that you have made statements to the officers and signed those statements. Jasper Johnson, you have made a signed statement to the officers?

JASPER JOHNSON: Yes, sir."

Jasper Johnson was voluntarily sworn before the Magistrate, and gave a complete statement in answers to questions put to him concerning his participation in this crime, generally about the same as is contained in his statement given to the Police (Appendix, 39a).

Next, Clarence Lofton, co-defendant, was voluntarily sworn and he was told by Mr. Burke that anything he said may be used against him and that he did not have to speak unless he wanted to. He corroborated what Johnson had said (Appendix, 42a). The Court Stenographer, David F. Houlihan, Jr., was not available at the trial of this petitioner because of illness, but Lieutenant Kelly testified from his recollection as to what was said before the Magistrate, upon interrogation by the Assistant District Attorney trying the case, who had the stenographer's transcript of the proceedings before him. At the later trial of Jasper Johnson on January 27, 1947, the court stenographer was available and testified, and for the information of this court, a transcript of the hearing before Magistrate Edward Williams is contained in the evidence at the trial of Clarence Lofton when he pleaded guilty generally to murder (Appendix, 37a to this brief). This was all in open court before a duly constituted magistrate of the City and County of Philadelphia.

Thereupon, petitioner was sworn, and having previously been warned, he said that he did not want to add anything, but he corroborated the testimony of the two previous co-defendants, Jasper Johnson and Clarence Lofton, that what they said was true (Appendix, 42a).

At his trial, petitioner denied that the statement he had given the police, or the fact that he had signed those of his co-defendants, was a voluntary act upon his part, and he averred that because of police brutality, he was compelled not only to sign his statement and sign the other statements as a witness, but was likewise compelled to testify before the magistrate as he did. The authorities positively and unequivocally denied his allegations of mistreatment and coercion and swore that when confronted with his inconsistent statements made at first, and with those of his confederates, he finally told the truth. They also swore that he was never subjected to any long, continuous, uninterrupted interrogation. This question of fact was submitted to the jury for decision, upon instructions of the trial judge, consistent with the long established decisions and the law of Pennsylvania (R. 195, 196, 197, 198).

Petitioner was convicted of the murder of Frank Endres, an employe of the Ace Broom factory in the first degree, before Judge Frank Smith and a Jury, who fixed the penalty at death. A motion for a new trial was argued before the Honorable Frank Smith, the trial judge, the Honorable Harry S. McDevitt, and the Honorable Joseph Sloane. Judge Smith and Judge McDevitt concurred in refusing a new trial and Judge Smith filed an opinion February 11, 1947 (R. 264). Judgment was pronounced upon the verdict.

On November 7, 1947, just before argument on this petitioner's appeal to the Supreme Court of Pennsylvania, after having sat in the case of Clarence Lofton, the lookout, who pleaded guilty generally to murder on January 31, 1947, and having heard his testimony and concurring in the judgment that it was murder in the first degree with a sentence of

life imprisonment, Judge Sloane belatedly filed a dissenting opinion in this petitioner's matter (R. 293). The testimony in Lofton's trial is attached to this brief as an appendix.

Jasper Johnson, alias James Jackson, alias "Fats", alias "Playboy", was tried before His Honor Judge Edwin O. Lewis and a Jury on January 27, 1947, and was likewise convicted in the first degree, and given the death penalty by the Jury. A Motion for a new trial in his case has been refused by the Court of Oyer and Terminer and an appeal is pending in the Supreme Court of Pennsylvania.

The appeal of this petitioner, Aaron Turner, was argued before the Supreme Court of the State of Pennsylvania on November 24, 1947, before Maxey, C. J., Linn, Stern, Patterson, Stearne and Jones, J.J. An opinion was filed by Mr. Chief Justice Maxey March 23, 1948, for the Court (R. 309), Mr. Justice Jones concurring in the judgment.

Petitioner had been in metropolitan Philadelphia from 1939, earning a dubious living, a smart, clever individual who is so tall that he is known as "Treetop" and whose ability to manipulate crooked dice was demonstrated by him a number of times to the authorities during his incarceration. Lt. James Kelly characterized him as follows at the trial of Clarence Lofton (Appendix, 16a):

> "The investigation showed that Aaron Turner was the dominant head of practically all of them, and this particular weapon that he used in this case was a constant companion to him. He was quite a gambler and quite a gambling cheat, and he carried this what they describe as a sash weight at all times."

SUMMARY OF ARGUMENT.

When the allegation of Petitioner, made at the time of his trial in Court, as to the coercive character of his confession and those of his accomplices, is absolutely and completely denied, and it is asserted by Respondent Commonwealth's witnesses that the confessions were voluntary, is it a question of *fact* for the Jury to decide, under proper instructions from the Trial Judge (and not a question of law) first, whether the confessions were voluntary in character; and, second, if true, whether a verdict of guilty can be based thereon?

(Affirmed in the Commonwealth of Pennsylvania Courts.)

LISENBA v. CALIFORNIA, 314 U. S. 219;
UNITED STATES v. MITCHELL, 322 U. S. 65;
LYONS v. OKLAHOMA, 322 U. S. 596.

ARGUMENT.

Under the law of the State of Pennsylvania, Edwin P. Rome, Esq., and Clinton Budd Palmer, Esq., were appointed as attorneys for the petitioner, as an indigent defendant (R. 313, footnote 2), and he had a fair and impartial trial before a jury which these counsellors participated in selecting, having under Pennsylvania Law the right to twenty-one

peremptory challenges, and as many more for cause as they could show. These attorneys were paid by the Commonwealth.

I.

ADMISSION OF THE CONFESSIONS IN EVIDENCE.

The petitioner gave a complete and accurate statement of the crimes (R. 35) with such details as only the perpetrator thereof would know. His statement was signed by Jasper Johnson as a witness and by his other accomplice Clarence Lofton (R. 41). In turn, Aaron Turner, this petitioner, signed the statements of his accomplices, Jasper Johnson (R. 42) and Clarence Lofton (R. 48) as a witness. Under the law of the State of Pennsylvania, all these statements were the same as if he had made them himself.

In COM. v. ORESZAK, 328 Pa. 65, Mr. Chief Justice Kephart said on page 68 thereof:

> "When the accused acknowledges the truth of the statements of his accomplices, they become admissible not as evidence or statements of his accomplices, but as his own admission of the facts they relate."
>
> COM. v. BALLON, 229 Pa. 323;
> COM. v. CARELLI, 281 Pa. 602;
> COM. v. LAWRENCE, 282 Pa. 128;
> COM. v. ROSE, 327 Pa. 220;
> COM. v. WOODING, 355 Pa. 555.

In COM. v. BROOKS, 355 Pa. 551, Mr. Justice Stern said at page 554:

> "There was admitted in evidence not only the signed confession of defendant himself but also that of Wood-

ing. It is objected that this violated the constitutional right of the accused to meet the witnesses face to face. Not only, however, was Wooding's confession made in defendant's presence, but, when reduced to writing, was read and signed by him as a witness without his denying or repudiating any of the statements it contained with respect to his own complicity in the crimes. For the purpose of showing such tacit acquiescence on defendant's part Wooding's confession was clearly admissible."

Petitioner was the man who wielded the sash weight or pipe and who killed two men for the purpose of robbing them, himself robbing his second victim of a sum of money which he did not disclose to his accomplices, and participating in a share of the proceeds of the robbery of the first man. Chief Justice Maxey in his opinion for the Court affirming the conviction said (R. 313):

"Anyone with experience in the administration of criminal law who reads the answers Turner made to the questions put to him will readily conclude that the statements he made to the officers were not those of a coerced or scared witness but that they were the statements of a man who had committed a murder and whose recital of its details was clear and explicit. The teller of the gruesome story of this double murder was obviously drawing on his memory and not on a fear-fired imagination. His narrative dove-tailed so accurately with the physical facts surrounding the crime and with the story told by his accomplices that there can be no reasonable doubt of the story's truthfulness."

The conviction of murder in the first degree and the fixing of the penalty at death by the jury was amply justified by the evidence. Disappointment at a just verdict and

proper judgment does not of itself raise a constitutional question of law.

Mr. Justice Kephart aptly said in COM. v. STERLING, 314 Pa. 76 (1934) at page 78:

> "The death penalty has been fixed by the Legislature in the belief that it not only protects society from the antisocial actions of the particular person condemned and punishes him as well, but that it is, in its imposition in each case, a deterrent to others who may contemplate injury to society."

To determine whether or not the confessions were voluntary the trial Court in its charge (R. 196, 197, 198) said as follows:

> "When it comes to consideration of the statements of the alleged confederates, or accomplices, as they might be called, it is your duty to carefully study the alleged confessions. Study them with care and caution, since these men have already admitted, themselves, being involved in murder. If you believe the alleged confessions or admissions of the accomplices, you must first find they were freely given, without promise, coercion, or inducement. If you find the confessions to be true, you may convict him upon the confession; but it is best to have it corroborated by material facts which indicate its truthfulness.
>
> "The police have presented the alleged confession of the defendant himself. These confessions are intertwined, and in examining the evidence you have the right to determine how each and every one was reached by the defendant and the two other men, Johnson and Lofton.
>
> "The law is quite clear about confessions. The law says that before a confession can be admitted the corpus delicti must have been proved. That means that the killing must be proved, and the surrounding cir-

cumstances must indicate that he has been killed unlawfully and feloniously at the hands of another. Then, before the confession may be admitted in evidence, the jury must be satisfied beyond a reasonable doubt that the confession has been a free and voluntary one, not induced by fear, coercion, or promise held out, or inducement held out to the defendant. You must first find that the confession was a voluntary statement made by the defendant of his own free will. That seems to me to be the crux of this case.

"For the same reason, if you do not believe this confession was a free and voluntary one, then you have no right to consider it in the evidence. If you believe beyond a reasonable doubt it is a free and voluntary confession, not induced by fear, coercion or inducement held out, or by threats made, then you may accept the confession in your consideration of all the evidence.

"There is another question of law involved, and that has to do with the alleged confession of the so-called confederates. You may remember it is apparent these alleged confessions were made either the 8th of June or later. The police, you may recall, testified they were made the 8th of June, and the defendant has testified they were made two or three days later. Nevertheless, my recollection is—and I do not think there is any doubt about this—that all the confessions were signed by each of the three who made them, and when each made a confession involving the other one, his confession was signed not only by the one making the confession, but was also signed by the others. This defendant not only signed his own alleged confession but also signed the alleged confession of Johnson and the alleged confession of Lofton at the time they were made. The law says a statement made in the presence of a defendant may be put in evidence against him only when his silence under the circumstances means

his assent to the correctness of the statement. This man put his name on each of the other two statements, where the other two men, Johnsor and Lofton, made their alleged confessions. There is no evidence, that I know of, that he said, 'These things are untrue that these men have said about me,' but he did in fact attach his name to the said statements. That is an inference that the statements are true.

"Statements generally may be offered in evidence and that is why I admitted it; but it has no effect as an admission except against the party who makes it, unless it was read to the defendant and he admitted its accuracy and truth. He put his name on each confession, and it is for the jury to determine whether there is from that the inference that those statements made in his presence, to which he put his signature, indicated his approval and correctness of the statements."

To accept the uncorroborated statements of the Petitioner as to alleged brutality as verity, and to declare as a matter of law, based upon them alone, that his confession and those of his confederates and accomplices were coerced, would be placing a premium upon perjury.

II.

TESTIMONY OF PETITIONER BEFORE A COMMITTING MAGISTRATE.

At or about the time the confessions were signed by the co-defendants, a hearing was had before Magistrate Edward Williams in the Central Station, City Hall, Philadelphia. D. Barlow Burke, Esq., was present as Assistant District Attorney. David F. Houlihan, Jr., the court stenog-

rapher, was ill at the time of this petitioner's trial on September 25, 1946, and unavailable. For this reason Lieut. Kelly was asked as to his recollection of what transpired before the Magistrate. The court stenographer was present on Monday, January 27, 1947 at the trial of Jasper Johnson, alias James Jackson, alias "Fats," alias "Playboy," and then he identified his notes and the transcript. It is also part of the case against Clarence Lofton and is found at page 37a of the appendix to this brief.

The interrogation of Lieut. Kelly as to what this Petitioner said at the time of the hearing before the committing magistrate was admitted by the trial judge, and will be found in the record (R. 76 to 86, inclusive).

All three defendants had signed or were about to sign all of the written confessions which were rather lengthy, and were being transcribed by a police stenographer. After Lieut. Kelly testified, D. Barlow Burke, Assistant District Attorney, stated to the three defendants before the magistrate (R. 76 and 38a of Appendix):

> "Do any of you men want to say anything this morning? I warn you in advance that anything you say may be used against you in court and that you don't have to say anything if you don't want to. I understand, however, that you have made statements to the officers and signed those statements. Jasper Johnson, you have made a signed statement to the officers? Jasper Johnson: Yes, sir. Mr. Burke: Do you want to say anything this morning? Jasper Johnson: Yes, sir."

Whereupon Jasper Johnson and Clarence Lofton detailed their part in the homicide and robbery of the two men. Aaron Turner, this petitioner, heard that testimony. Then he was voluntarily sworn and testified as follows (R. 84 and 42a and 43a of Appendix):

"Q. Do you want to say anything to his Honor?
A. No, sir.
Q. Can you add anything?
A. No, sir.
Q. You don't want to add anything? Do you agree with the testimony that these two men have given in court?
A. Yes, sir.
Q. Do you corroborate their testimony?
A. Yes, sir.
Q. You say that it's true?
A. Yes.
Q. You are not denying anything that they said?
A. No, sir.
Q. How much money did you get?
A. I don't know.
Q. About how much?
A. I would say about $175.
Q. Did you divide up with the others? Was that $175 that which you yourself got out of the thing?
A. Yes, sir.
Q. Was that in addition to the $50 that one got and the $175 the other got?
A. No, sir.
Q. That is your share?
A. Yes, sir.
Q. You got $175 yourself?
A. Yes, sir.'"

In the case of COM. v. CLARK, 130 Pa. 641 (1889), Mr. Chief Justice Paxson said at page 650:

"The law is always tender and merciful to a defendant. It will protect him against the use of a confession drawn from him by holding out inducements to make it; but when a criminal wants to ease his mind by a voluntary confession, it would be a weak senti-

mentalism to interfere with his doing so. Nor do I see that its force as a statement is impaired by the fact that the justice of the peace administered an oath to him."

And further on page 651:

"The fact must not be overlooked that a defendant in a homicide case may now take the stand, and be sworn as a witness on his own behalf. There would seem to be no good reason why he may not of his own motion go before a magistrate, and make a voluntary statement under oath. It is quite a different matter where the oath is administered against his will."

In the case of COM. v. SPARDUTE, 278 Pa. 37 (1923), on page 47 thereof, Mr. Justice Schaffer said:

"It did not invalidate his confession that he was sworn.

'The mere fact that the defendant was under arrest, or was in charge of armed police officers when he made his confession, will not make a confession involuntary.'"

In UNDERHILL on CRIMINAL EVIDENCE, 2d ed. Section 132, page 256, he has the following to say upon the fact that an accused person may be sworn before a magistrate:

"The preliminary examination of an accused person has for its main objects the perpetuation of the testimony against him, the ascertainment if he shall be held to await the action of the Grand Jury, and if so whether he shall be admitted to bail. When the accused is brought before the justice the latter must, as soon as possible, examine the witnesses for and against him under oath. The accused must be present when

this evidence is received, though the examining magistrate may exclude all witnesses except the one who is testifying. The accused may be sworn at *his own request* (Italics ours), and examined as a witness in his own behalf, under the restrictions which apply to the examination of defendants in criminal trials. He should, in justice to himself, be informed of his right to refrain from testifying. He should be told that he need not answer any questions and that his silence or expressed refusal to answer incriminating questions cannot be used against him on his trial. After thus having been warned anything he may say in the nature of a confession and which is not under oath, may be used against him on his trial. And where, having been instructed as to his right to remain silent at the preliminary examination if he so desires, he voluntarily goes on the witness stand and, under oath, testifies to his version of the facts in the case, anything he may say of an incriminating nature under such circumstances, though he is under oath, may be used against him subsequently as his confession."

These citations dispose of any contention of the petitioner that it was not right and proper to have presented to the court and jury what Johnson, Lofton and Turner said after being sworn before Magistrate Williams, and after all three were fully warned that anything said at the time under oath would be used at the time of trial in court. This Petitioner corroborated Johnson and Lofton, and at no time was a reluctant witness.

III.

RE-ENACTMENT OF THE CRIME.

The confessions had been signed on June 8, 1946, and after the hearing before the committing magistrate, the accused were taken to the premises 355-57 North 2nd Street, and there Clarence Lofton and Jasper Johnson, in the presence of this petitioner re-enacted the crime. Petitioner when asked if he had anything to say, said he did not wish to say anything (R. 94 to 104, inclusive). This was ample corroboration of the confessions theretofore signed by each defendant, and the proceedings before the magistrate.

COMMONWEALTH v. SZACHEWICZ, 303 Pa. 410.

In further corroboration of the confession of this petitioner, Jasper Johnson, in his confession said (R. 45) in part:

> "The fellow was on the floor scuffling and trying to get up. I runs in his pocket and pulls out a wallet out of the hip pocket. I look in the wallet sees money and takes the money out. I slings the wallet somewheres in the building, but I don't know where. I looks around to see Treetop and the other man. He was on the floor and Tree was over him. He had done slugged him."

Mr. Spirdon Kondratenko testified (R. 104-105) that he had found a wallet and key in the coal box of the Ace Broom Factory, 355-57 North 2nd Street shortly after December 15, 1945, the date of the happening of this crime, and gave them to Detective Fisher on January 21, 1946. This coal box was located in the front of the building near the door through which the defendants were said to have entered

and departed. The pocketbook was identified by Mrs. Simmons, the widow of one of the men killed, as being his property, and the key was identified by Mrs. Endres, the widow of the other slain man as being the key to their residence (R. 108).

IV.

AS TO ACCUSED BEING HELD FIVE DAYS BEFORE PRELIMINARY HEARING.

This question has been answered by the trial judge, his Honor Frank Smith, in his opinion refusing a new trial, in which Judge Harry S. McDevitt concurred (R. 266, 267, 268, 269), and therein he said:

> "The evidence shows by inference at least that the defendant was placed in custody by the police without a warrant first having been issued, because they had only reasonable grounds to believe that he might be involved in two murders, and that they desired to question him and others. We are aware of the fact that it is improper for an innocent man to be apprehended and detained in the custody of the police, and that the courts in all jurisdictions condemn such practice even to the point where the officers are held liable in damages. But it is also true that the law favors honest efforts to bring the guilty to justice. In McCarthy v. DeArmit, 99 Pa. 63, 71 (1881), it was said:
>
> > 'The fact of felony, and reason for suspecting a particular person, justify his arrest. But a peace officer, who arrests one upon reasonable suspicion of felony will be excused, even though it appear afterwards that in fact no felony had been committed. It may be expected that a felon will flee from justice, if an opportunity is afforded him, and that if he

knows he is suspected he will do what may be in his power to obliterate the evidences of his crime. In these circumstances are found forcible reasons for prompt action in his arrest. The public safety, and due apprehension of criminals charged with heinous crimes, imperiously require that such arrests should be made without warrant by officers of the law. Many an innocent man has been and may be taken up on suspicion; but the mischief and inconvenience to the public, in this point of view, is comparatively nothing; it is of great consequence to the police of the country. Burns v. Erbe, supra; Rohan v. Sawin, 5 Cush. 281; Wakely v. Hart, supra; Cooley on Torts, 174.'

"Common sense tells us that in cases of brutal, vicious murder where the victim is dead and the murderer is the only living person who was present at the scene of the crime, all such crimes would go unpunished if the police officers were entirely hampered in their efforts to procure information upon which to base a charge of homicide. In many such cases, it is only by patient, determined, and searching police work that the officers may get sufficient information upon which to base a reasonable suspicion that a certain person was involved in the crime. Society demands that this be so. It is clear that in matters based only upon a reasonable suspicion of guilt that the police could not present sufficient evidence to enable a magistrate to hold a person for the Grand Jury, and that if this was the only course that the police could pursue, many guilty persons could bring about their discharge on a writ of habeas corpus, and thus be forewarned by the information then had by the police. In this manner a vicious killer would have to be released on a society otherwise unable to cope with him. It seems to us as long as the actions of the police are those which would have the approval of sober-minded, reasonable

men, that they should be permitted to make such proper investigation to solicit the truth, so that the man in custody might either be discharged or brought before a magistrate as soon as is reasonably practical for a hearing. *The question of whether the detention of the accused be for an hour, or a day, or for five days, is not the deciding factor since inherently any detention for any period of time, no matter how short, may be classed as coercive.* (Italics ours.) It is contended by the defense that any detention beyond a period of 36 hours is prima facie evidence of coercion. It is our opinion that the period of time may be taken into consideration in determining the question of whether the statement of the person detained is a free and voluntary confession or whether the period of detention was material in forcing an involuntary statement from him. It is one of the elements to be considered, and in reaching a determination of this question, the judge and the jury having the defendant before them are best able to decide whether or not he is of a mental and physical type to be or not to be affected alone by the period of detention. No one is in such a good position as to determine the effects of a detention as the Court and jury before whom he appeared and was tried. They had all of the witnesses, including the defendant, before them and they are best able to judge the effect on the prisoner of what occurred before he made his statement to the police: Com. v. Aston, 227 Pa. 112; Com. v. Johnson, 162 Pa. 63; Com. v. Johnson, 217 Pa. 77; Com. v. Jones, 297 Pa. 326, 334.

"*After a study of the defendant as he appeared in Court* (Italics ours), and a consideration of the testimony, it is our opinion that his detention without more is not sufficient for the granting of a new trial"

Particular reference is made to the case of the COM. v. JONES, 341 Pa. 541 (1941), and there Mr. Justice Patterson said at pages 547, 548 and 549, as follows:

"It is urged that the written statements made and signed by appellant on June 7, 1940, and June 17, 1940, in each of which he states that it is made voluntarily and with knowledge that it may be used against him in court, should not have been admitted because he was being held in custody at the time and was denied the right to procure an attorney, because he was accused of lying and those having him in charge assumed his guilt during prolonged questionings, because of the application of a lie detector during the interrogations, and because the statements had been forced from him by physical abuse and torture. *'The mere fact that the defendant was under arrest, or was in the charge of armed police officers when he made his confession, will not make a confession involuntary:'* Com. v. Spardute, 278 Pa. 37, 47. See also Com. v. James, 294 Pa. 156, 161; Com. v. Cavalier, 284 Pa. 311, 315. Nor are the statements invalidated by reason of the fact that appellant was not represented by counsel, no request for such representation ever having been made: Com. v. Spardute, supra, 46. Similarly, the admissibility of the statements is not affected by the fact that in the interrogations appellant was accused of lying or because his guilt was assumed: McClain v. Com., 110 Pa. 263, 269; Com. v. Spardute, supra, 48. And, the application of a lie detector did not vitiate the statements. See Com. v. Hipple, 333 Pa. 33, wherein it was expressly held that an objection based on the fact that a confession was thus induced cannot be sustained, this Court pointing out, at page 39, that 'A confession procured by a trick or artifice, not calculated to produce an untruth, is never vitiated thereby.'

"While appellant testified that they were procured through fear and abuse inflicted upon him by those having him in custody, the witnesses to the statements testified that no force or coercion was used. Where, by the Commonwealth's witnesses, it is shown that a

confession is made voluntarily, without such threat or inducement as might secure a false confession, it must be admitted. If afterwards the defendant testifies, or produces other witnesses who testify, that it was not voluntarily made, it becomes a question for the jury: Com. v. Aston, 227 Pa. 112, 115, 116; Com. v. Shew, 190 Pa. 23, 24; Com. v. Epps, 193 Pa. 512, 515; Com. v. Van Horn, 188 Pa. 143, 168; Com. v. Shaffer, 178 Pa. 409, 414; Volkavitch v. Com., 9 Sadler 327; Underhill on Criminal Evidence, 2d ed., Section 126, p. 242; Com. v. Spardute, supra, 48. The circumstances attending the making of appellant's statement were unquestionably for the jury's consideration under proper instructions by the court, which were given, as follows: 'Now, if you find, members of the jury, that he (appellant) was coerced and compelled by reason of force and violence and threat or otherwise, intimidation of any kind, to make the statements, then they are not his voluntary statements and you should ignore them entirely and give them no consideration whatever. But if you find that he made these statements voluntarily as stated in the statements, then you will give them consideration and determine what is the real truth of the matter.' See Com. v. Farrell, 319 Pa. 441, 444."

V.

AS TO THE FEDERAL LAW AND THE 6th AND 14th AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

DUE PROCESS.

In this State it has always been held, as previously contended herein, that the determination of whether or not

a confession was voluntarily given, in the first instance before it can be admitted in evidence, is for the trial judge. Thereafter, if a defendant denies that it was voluntary and alleges coercion of any kind it becomes a question of *fact* for the jury, first, to determine whether it was voluntary, and if they so decide, then to determine whether or not it is truthful, and if truthful a verdict can be predicated thereon. Therefore appellant's whole argument is based upon his contention that the matter is entirely one of law, whereas it is ultimately, solely one of fact.

A long discussion of some of the problems and developments in the admissibility of confessions is contained in the Texas Law Review, April 1946, Volume XXIV, No. 3, page 239, by Charles T. McCormick, Dean and Professor of Law at the University of Texas. There on page 264, he discusses the celebrated case of LISENBA v. CALIFORNIA, 314 U. S. 219 (1941), and Dean McCormick had this to say:

> "The State's evidence was to the effect that the statement was voluntary, and the trial judge admitted it subject to the jury's finding that it was voluntarily made.'
>
> "The high court, in a long opinion by Roberts, J., affirmed the conviction. The following passages show the court's difficulty in defining the effect it should give to a jury's finding on voluntariness:
>
> 'Where the claim is that the prisoner's statement has been procured by such means (threats or promises), we are bound to make an independent examination of the record to determine the validity of the claim. The performance of this duty cannot be foreclosed by the finding of a court, or the verdict of a jury, or both. If the evidence bearing upon the question is uncontradicted, the application of the constitutional provision is unembarrassed by a finding or a verdict in a state court.
>
> 'There are cases, such as this one, where the evi-

dence as to the methods employed to obtain a confession is conflicting, and in which, although denial of due process was not an issue in the trial, an issue has been resolved by court and jury, which involves an answer to the due process question. *In such a case, we accept the determination of the triers of fact, unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.*

*'Here, judge and jury passed on the question whether the petitioner's confessions were freely and voluntarily made * * *. Our duty, then, is to determine whether the evidence requires that we set aside the finding of two courts and a jury, and adjudge the admission of the confessions so fundamentally unfair, so contrary to the common concept of ordered liberty, as to amount to a taking of life without due process of law.* (Italics ours.)

'In view of the conflicting testimony, we are unable to say that the finding below was erroneous so far as concerns the petitioner's claims of physical violence, threats, or implied promises of leniency. There remains the uncontradicted fact that on two occasions, separated by an interval of eleven days, the petitioner was questioned for protracted periods. He made no admission implicating him in his wife's death during, or soon after, the interrogations of April 19, 20 and 21. If, without more, eleven days later, confessions had been forthcoming, we should have no hesitation in overruling his contention respecting the admission of his confessions.

'Does the questioning on May 2nd, in and of itself, or in the light of his earlier experience, render the use of the confessions a violation of due process? * * *

'* * * On the facts as we have endeavored fairly to set them forth, and in the light of the findings in the state courts, *we cannot hold that the illegal con-*

> *duct* (Italics ours) in which the law enforcement officers of California indulged, by the prolonged questioning of the prisoner before arraignment, and in the absence of counsel, or their questioning on May 2, *coerced the confessions* (Italics ours) the introduction of which is the infringement of due process of which the petitioner complains.'"

There have recently been some very interesting decisions upon this constitutional question, both Federal and Pennsylvania State. In the case of COM. ex rel. SHAW v. SMITH, 147 Sup. 423, at page 433 in an opinion written by President Judge Keller, he said:

> "The Fourteenth Amendment to the Federal Constitution, the 'due process of law' clause of which—equivalent to the clause in our Constitution: 'Unless by the judgment of his peers or the law of the land,'—has been extended far beyond its original signification, does not require *that the 'process of law' in order to be 'due,' must be the same in all the states, or the same as prescribed for the Federal courts.* The State is free to regulate the procedure of its courts in accordance with its own conceptions of policy, unless in so doing it *'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental'* (Italics ours): Brown v. Mississippi, 297 U. S. 278, 285; Snyder v. Massachusetts, 291 U. S. 97, 105; Hurtado v. California, supra; Missouri v. Lewis, 101 U. S. 22, 31; Lisenba v. California, 314 U. S. 219, 62 Sup. Ct. 280, 290; Mooney v. Holohan, Warden, 294 U. S. 103, 113. 'Its procedure does not run foul of the Fourteenth Amendment because another method may seem to our thinking to be fairer or wiser or to give a surer promise of protection to the prisoner at the bar:' Snyder v. Massachusetts, supra. A judicial practice that has been non existent for 165 years

cannot be said to be so 'rooted in the traditions and conscience of our people as to be ranked as fundamental.'".

This case of COM. ex rel. SHAW v. SMITH, supra, was cited with approval in the case of COM. ex rel. UVEGES, Appellant v. ASHE, 161 Pa. Sup. 58, wherein Judge Rhodes at page 62 said:

"(4) The Sixth Amendment to the Federal Constitution giving to an accused in all criminal prosecutions the right to have the assistance of counsel for his defense applies only to trials in the Federal courts. Betts v. Brady, 316 U. S. 455, 461, 62 S. Ct. 1252, 86 L. Ed. 1595, 1601; Com. ex rel. McGlinn v. Smith, supra, 344 Pa. 41, 45, 24 A. 2d 1, 3.

"(5) The Fourteenth Amendment to the Federal Constitution relating to due process does not impose upon the states any uniform policy concerning representation by counsel in criminal cases; and it cannot be said that the amendment embodies an inexorable command that no trial for any offense, or in any court, would be fairly conducted and justice accorded a defendant who is not represented by counsel. Betts v. Brady, supra, 316 U. S. 455, 473, 62 S. Ct. 1252, 86 L. Ed. 1595, 1607; Com. ex rel. McGlinn v. Smith, supra, 344 Pa. 41, 49, 58, 24 A. 2d 1; Com. ex rel. Shaw v. Smith, supra, 147 Pa. Superior Ct. 423, 433, 24 A. 2d 724; Mayo v. Wade, 5 Cir., 158 F. 2d 614. See also, Foster et al. v. Illinois, 332 U. S. 134, 67 S. Ct. 1716, 91 L. Ed. 1542; Gayes v. New York, 332 U. S. 145, 67 S. Ct. 1711, 91 L. Ed. 1962."

Therefore, the States are not uniformly bound to have like procedure in criminal cases, nor are they held to the same rules concerning the admission of evidence by which criminal trials are conducted in the Federal Courts.

Argument

The Supreme Court of the United States decided in STRAUDDER v. WEST VIRGINIA, 100 U. S. 303, as follows:

> To give the Supreme Court of the United States jurisdiction there must be a denial or inability resulting from the Constitution or laws of a State. The sufficiency of the evidence in a criminal case is not a Federal question.

In WALKER v. SAUVINET, 92 U. S. 90:

> A party is not deprived of his liberty without due process of law if the trial is had according to the settled course of judicial proceedings.

In the case of FRANK v. MANGUM, 237 U. S. 309, 326, 35 S. Ct. 582, 59 L. Ed. 969, it was held:

> It is perfectly well settled that a criminal prosecution in the courts of a State, based upon a law not in itself repugnant to the Federal Constitution, and conducted according to the settled course of judicial proceedings as established by the law of the State, so long as it includes notice, and a hearing, or an opportunity to be heard before a court of competent jurisdiction, according to established modes of procedure, is "due process" in the constitutional sense.

And this case went on further to hold:

> Where an appeal is given in criminal prosecution, in determining whether defendant has been convicted without due process of law, proceedings in the Appellate Court as well as proceedings in the trial court must be considered.

And the Supreme Court of the United States has gone on further to conclude:

No particular form of procedure is required." (GARLAND v. WASHINGTON, 232 U. S. 642.) "And where the conditions just enumerated are fulfilled there is no violation of the guaranty of due process of law." (PICO v. U. S., 228 U. S. 225.)

In KRUG, 79 Fed. 308, it was said:

> The law by which the question of due process is determined is the law of the jurisdiction where the offense was committed and the trial is had.

Indeed, in MAXWELL v. DOW, 176 U. S. 581, it was held:

> Within constitutional limits, the State and Federal Governments have full control over criminal procedure within their respective jurisdictions * * * When the complaint is merely that a State court has erroneously decided the facts of the case, all the proceedings before it being regular and sufficient, no claim of a denial of due process can be set up. (FRANKLIN v. SOUTH CAROLINA, 218 U. S. 161.

The proper and the now well settled view of these constitutional questions, and the alleged violation of the 6th and 14th Amendments of the Federal Constitution upon the matter of Confessions, is contained in a well written article entitled:

"ADMISSIBILITY OF CONFESSIONS IN THE FEDERAL COURTS AND THE HOBBS BILL," in the Journal of Criminal Law and Criminology, including the American Journal of Police Science, Vol. XXXVIII, No. 2 of July-August, 1947, at pages 136, 137 and 138, as follows:

"The *Hobbs* bill[1] is designed, according to its author,[2] to 'correct' the rule of the *McNabb* case[3] as to admis-

[1] Designated as H. R. No. 4, 1st Session 80th Congress.

[2] Representative Hobbs of Alabama.

sibility of confessions in evidence. That rule, as originally propounded, made a confession taken by federal officers, prior to a deliberately delayed arraignment of a person apprehended for the commission of a crime, inadmissible in evidence. The decision was not based upon the constitutional ground of a violation of due process,[4] *but upon the power of the United States Supreme Court to supervise the administration of criminal justice in the federal courts.*[5] *The application of the rule is limited, therefore, to federal cases and to federal officers.*

"One of the manifestations of disapproval of the *McNabb* decision[6] was the first attempt to pass the *Hobbs* bill, in the 78th Congress.[7] The present bill, which recently died in the Senate Judiciary Committee, is substantially the same as the one which has thrice passed

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[3] McNabb v. United States, 318 U. S. 332 (1943); An Internal Revenue Department Agent was killed in a raid on moonshiners, and the McNabb brothers were apprehended for the crime. Conviction was obtained largely on the basis of the confessions in question. The Supreme Court reversed on the ground that the confessions were inadmissible in evidence. On retrial of the case, it was found that the McNabbs had in fact been duly arraigned, and they were then convicted. McNabb v. United States, 142 F. (2d) 904 (C. C. A. 6th, 1944). In his dissenting opinion in the first McNabb case, Mr. Justice Reed pointed out that the record did not show failure to arraign, nor did counsel raise the issue. 318 U. S. 332, 349 (1943).

[4] **See** Ashcraft v. Tennessee, 322 U. S. 143 (1944); Lisbenda v. California, 314 U. S. 219 (1942).

[5] McNabb v. United States, 318 U. S. 332, 347 (1943).

[6] A rule to the same effect as the Hobbs Bill was originally incorporated in the preliminary draft of the proposed federal rules of criminal procedure, but after being subjected to adverse criticism, was dropped. Holtzoff, Proposed Rules of Criminal Procedure, (1943) 3 F. R. D. 420; Cummings, The Third Great Adventure, (1943) 3 F. R. D. 283.

[7] H. R. No. 3690, 78th Cong. (1st Sess.). The bill met lively opposition on the House floor. The principal objection expressed was that the bill, indirectly authorized violations of the extant federal arraignment statutes. Several representatives argued that such legislation would tend to break down those requirements and sanction the use of "third degree" methods of interrogation. 80 Cong. Rec. February 24, 1947, at 1430 **et seq.**

the House but has thus far failed to pass the Senate.[8] It provides that a failure to observe the requirements of law as to the time within which a person under arrest must be brought before a committing officer shall not render inadmissible any evidence otherwise admissible. The intention was obviously to negate specifically the rule of the *McNabb* case, and to confine the question of admissibility to its previous status.[9]

"In the hearings on the bill before the House Committee, there was a lengthy discussion of the repercussion of the *McNabb* case rule on law enforcement problems.[10] Police officials throughout the federal system claimed to be seriously hampered in the performance of their duties. There were many instances in the lower federal courts of releases of accused persons, even though they had made confessions which would ordinarily have been admissible, but which did not meet the requirements of the *McNabb* case.[11] In some federal courts, however, the *McNabb* case rule was held to be limited quite closely to the particular facts of that case and was not followed in similar situations.[12]

"While at the time of its introduction the *Hobbs* bill would have effectively removed these difficulties by nullifying the effect of the *McNabb* decision, the Supreme Court since then has apparently obviated the need for remedial legislation by its modification of the

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[8] Passed House, 80 Cong. Rec. Feb. 24, 1947 at 1440. Referred to Senate Committee on the Judiciary, 80 Cong. Rec., Feb. 26, 1947 at 1476.

[9] See **infra** note 15.

[10] Hearings before Sub-Committee No. 2 of the House Committee on the Judiciary on H. R. No. 3690, Ser. No. 12 (1944).

[11] Gros v. United States, 136 F. (2d) 878 (C. C. A. 9th, 1943); United States v. Haupt, 136 F. (2d) 661 (C. C. A. 7th, 1943).

[12] United States v. Grote, 140 F. (2d) 413 (C. C. A. 2d, 1944); United States v. Keegan et al, 141 F. (2d) 248 (C. C. A. 2d, 1944).

McNabb case rule in *United States v. Mitchell.*[13] *There the Court phrased the rule of the McNabb case to stand for the proposition that the illegal detention of an accused person will invalidate his confession only when the detention itself acts as an inducement in the procuring of the confession.*[14] (Italics ours.) Seemingly the voluntariness of the confession would thereby be destroyed and its admissibility would be open to due process objections, which would of course override any statutory sanction.[15]

"Mr. Justice Reed's interpretation of the revised *McNabb* case rule, as expressed in his concurring opinion in the *Mitchell* case, is that a confession is made inadmissible by illegal detention and other improper conduct 'even though the detention plus the conduct do not together amount to duress or coercion.'[16] This would mean, then, that something less than a due process violation is still sufficient to prevent the admission of a confession in federal cases. The present rule, therefore, seems to represent a compromise between the basic due process test and the original *McNabb* case principle. Apparently it would be unaffected by the *Hobbs* bill, which was designed primarily to nullify

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[13] **United States v. Mitchell, 322 U. S. 65 (1944).**

[14] **Id. at 68.**

[15] Prior to the McNabb case, the rule as to admissions of confessions in evidence was to the effect that, if an accused was induced to confess by the infliction or threat of physical suffering, or by threats or promises which were likely to cause him to make a false statement, the confession was not admissible. Wilson v. United States, 162 U. S. 613 (1895). Similarly, circumstances of prolonged questioning and detention have been held to be so coercive as to invalidate confessions. White v. Texas, 310 U. S. 530 (1940); Chambers v. Florida, 309 U. S. 227 (1940); Wigmore, Evidence, (3rd ed. 1940) §882. These tests of constitutionality also applied to cases appealed from state courts on due process grounds. See Ashcraft v. Tennessee, 322 U. S. 143 (1944); (accused questioned almost continuously for 36 hours. Questioning held inherently coercive and therefore violative of the Fourteenth Amendment).

[16] **322 U. S. 65, 71.**

the McNabb case rule, and not necessarily to force the Court back to the due process test.

"The problem underlying the opposing views of the original *McNabb* case rule and the *Hobbs* bill is one of reconciling the interest of the individual in security from inquisitorial methods of criminal investigation with the public interest in effective methods of apprehension and prosecution of criminals. *While the individual should have the benefit of a prompt arraignment, efficient law enforcement necessitates a reasonable period of interrogation of a suspected criminal prior to the making of formal charges.*" [17]

This Petitioner was not questioned continuously. He was suspected of many crimes. His statements were checked by the detectives, and their inconsistency, as well as their lack of corroboration from his accomplices was brought to his attention. *This took time* and no Court has ever said that the authorities may not question those suspected of crime.

In UNITED STATES v. MITCHELL, 322 U. S. 65 (1944), Mr. Justice Frankfurter said at page 67:

"We are dealing with the admissibility of evidence in criminal trials in the federal courts. Review by this Court of state convictions presents a very different situation, confined as it is within very narrow limits. *Our sole authority is to ascertain whether that which a state court permitted violated the basic safeguards of the Fourteenth Amendment.* (Italics ours.) Therefore, in cases coming from the state courts in matters of this sort, we are concerned solely with determining whether a *confession* is the result of *torture, physical or psychological*, and *not the offspring of reasoned choice.* How difficult and often elusive an inquiry this implies, our decisions make manifest. And for the

[17] Wigmore, The Science of Judicial Proof (3rd ed. 1937) §276.

important relation between illegal incommunicado detention and 'third degree' practices, see IV. Report, National Commission on Law Observance and Enforcement (better known as the Wickersham Commission), (1931), pp. 4, 35 et seq., 152; and the debates in the House of Commons on the Savidge case, 217 H. C. Deb. (5th ser. 1928), pp. 1216-1220, 1303-1339, 1921-1931, and Inquiry in Regard to the Interrogation by the Police of Miss Savidge, Cmd. 3147 (1928); Report of the Royal Commission on Police Powers and Procedure, Cmd. 3297 (1929). But under the duty of formulating rules of evidence for federal prosecutions, we are not confined to the constitutional question of ascertaining when a confession comes of a free choice and when it is extorted by force, however subtly applied. See UNITED STATES v. OPPENHEIMER, 242 U. S. 85, 88. *The McNabb decision was an exercise of our duty to formulate policy appropriate for criminal trials in the federal courts.* We adhere to that decision and to the views on which it was based. (For cases in which applications of the McNabb doctrine by circuit courts of appeals were left unchallenged by the Government, see United States v. Haupt, 136 F. 2d 661; Gros v. United States, 136 F. 2d 878; Runnels v. United States, 138 F. 2d 346):

"But the foundations for application of the McNabb doctrine are here totally lacking. Unlike the situation in other countries, see, for instance, §§25 and 26 of the Indian Evidence Act, 1872,[1] under the prevailing American criminal procedure, as was pointed out in the McNabb case, 'The mere fact that a confession was made while in the custody of the police does not render

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[1] §25: "No confession made to a Police officer, shall be proved as against a person accused of any offense."

§ 26: "No confession made by any person whilst he is in the custody of a police office, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person."

it inadmissible." 318 U. S. at 346. Under the circumstances of this case, the trial courts were quite right in admitting, for the juries' judgment, the testimony relating to Mitchell's oral confessions as well as the property recovered as a result of his consent to a search of his home. As the issues come before us the facts are not in dispute and are quickly told.

"In August and early October 1942, two houses in the District of Columbia were broken into and from each property was stolen. The trail of police investigation led to Mitchell who was taken into custody at his home at 7 o'clock in the evening on Monday, October 12, 1942 and driven by two police officers to the precinct station. Within a few minutes of his arrival at the police station, Mitchell admitted guilt, told the officers of various items of stolen property to be found in his home and consented to their going to his home to recover the property.[3] It is these admissions and that property which supported the convictions, and which were deemed by the court below to have been inadmissible. Obviously the circumstances of disclosure by Mitchell are wholly different from those which brought about the disclosures by the McNabbs. Here there was no disclosure induced by illegal detention, no evidence was obtained in violation of any legal rights, but instead the consent to a search of his home, the prompt acknowledgment by an accused of his guilt, and the subsequent rueing apparently of such spontaneous cooperation and concession of guilt.

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[3] In both cases Mitchell denied the testimony of the officers that he had in fact made prompt and spontaneous confession and consent to the search of his home and on the basis of such denial motions were made to exclude the evidence. The trial judges ruled that whether these statements were in fact made in the circumstances narrated were questions of fact for the juries. As such they were left to the juries, and we here accept their verdict as did the court below. Mitchell, it must be emphasized, merely denied that he made these statements and so did not contest the time of making them. While at the trial there was a claim by Mitchell that he was abused by the police officers, in the state of the record that issue is not here.

"But the circumstances of legality attending the making of these oral statements are nullified, it is suggested, by what followed. For not until eight days after the statements were made was Mitchell arraigned before a committing magistrate. Undoubtedly his detention during this period was illegal. *The police explanation of this illegality is that Mitchell was kept in such custody without protest through a desire to aid the police in clearing up thirty housebreakings, the booty from which was found in his home.* (Italics ours.) Illegality is illegality, and officers of the law should deem themselves special guardians of the law. But in any event, the illegality of Mitchell's detention does not retroactively change the circumstances under which he made the disclosures. These, we have seen, were not elicited through illegality. Their admission, therefore, would not be use by the Government of the fruits of wrongdoing by its officers. Being relevant, they could be excluded only as a punitive measure against unrelated wrongdoing by the police. Our duty in shaping rules of evidence relates to the propriety of admitting evidence."

Mr. Justice Douglas and Mr. Justice Rutledge concur in the result and Mr. Justice Black dissented. Mr. Justice Reed filed a concurring opinion on page 71 of U. S. v. MITCHELL, supra, as follows:

"As I understand McNabb v. United States, 318 U. S. 332, as explained by the Court's opinion of today, the McNabb rule is that where there has been illegal detention of a prisoner joined with other circumstances which are deemed by this Court to be contrary to *proper conduct of federal prosecutions*, the confession will not be admitted. Further, this refusal of admission is required even though the detention plus the conduct do not together amount to duress or coercion

If the above understanding is correct, it is for me a desirable modification of the McNabb case.

"However, even as explained I do not agree that the rule works a wise change in federal procedure.

"In my view detention without commitment is only one factor for consideration in reaching a conclusion as to whether or not a confession is voluntary. The juristic theory under which a confession should be admitted or barred is bottomed on the testimonial trustworthiness of the confession. If the confession is freely made without inducement or menace, it is admissible. If otherwise made, it is not, for if brought about by false promises or real threats, it has no weight as proper proof of guilt. WAN v. UNITED STATES, 266 U. S. 1, 14; WILSON v. UNITED STATES, 162 U. S. 613, 622; 3 Wigmore Evidence (1940 Ed.) §882.

"As the present record shows no evidence of such coercion, I concur in the result."

VI.

WITH REFERENCE TO PETITIONER'S ALLEGED REQUEST FOR COUNSEL.

Petitioner did not ask for counsel (R. 86) and so states himself (R. 133).

Nevertheless his Honor Judge Frank Smith, the trial judge, in his very learned opinion (R. 282a) said:

"The defendant furthermore contends that he was deprived of his constitutional right in not being furnished with counsel. The defendant testified that during the time he was examined, he asked for counsel and that same was refused him. The police officers testified that the defendant did not ask for counsel. The verdict of the jury shows that they believed the

testimony of the police officers and as we have before stated, they had an opportunity of observing this defendant and the police officers and weighing their testimony. This defendant is not the poor, moronic type of negro similar to those accused in some other cases. He is a clever, knowing criminal.

"The same question arose in the case of Comwlth. v. Spardute, 278 Pa. 37, 46, where the defendant testified that he made a request for counsel and it had been denied him. The court stated that it would have been a grave infraction of his rights if this were so, but that this testimony was denied by the police that any such request was made, and the Supreme Court in that case, acted upon the assumption that the verdict of the jury was justified and the evidence of the police was true.

"It is clear from a reading of the cases that the right of an accused for the appointment of counsel under the common law did not exist, and that right in this jurisdiction did not exist until by Statute and constitutional provisions it was specifically created. In this Commonwealth by the Act of May 31, 1718, 1 Sm. L. 105, Sec. 4, it was provided 'that learned counsel be assigned to the prisoners' * * * 'upon all trials of capital crimes.' Then the Act of March 22, 1907 P. L. 31, Section 1, 19 Purdon, P. S. Sec. 784, provided for the compensation of such assigned counsel. There is nothing in the Constitution or the Acts of Assembly of this Commonwealth which indicate that an accused has a right to have counsel appointed upon being taken into custody. The law provides that he shall have the right of counsel to represent him at trial. In the case of Com. ex rel. Shaw v. Smith, 147 Pa. Superior Ct. 423 Keller, P. J. (on page 432) said:

'We respectfully submit that the word, defense, as used in the phrase in the Sixth Amendment to the Federal Constitution, in all criminal prosecutions, the accused shall enjoy the right to a speedy and public

trial * * * and to have the Assistance of Counsel for his defense, contemplates defense at a speedy and public *trial;* and Mr. Justice Black has said, The very word trial connotes decisions on the evidence and argument properly advanced in open court.' "

The cases previously cited indicate that the Court was not in error in having presented to the court and jury what Johnson, Lofton and Turner said after being sworn before Magistrate Williams, and after all three were amply warned that anything said at the time under oath would be used at time of the trial in court.

The trial judge, Frank Smith, in his opinion has cogently stated the crux of this case when he said (R. 267):

"Common sense tells us that in cases of brutal, vicious murder where the victim is dead and the murderer is the only living person who was present at the scene of the crime, all such crimes would go unpunished if the police officers were entirely hampered in their efforts to procure information upon which to base a charge of homicide. In many such cases, it is only by patient, determined and searching police work that the officers may get sufficient information upon which to base a reasonable suspicion that a certain person was involved in the crime. * * * It seems to us as long as the actions of the police are those which would have the approval of sober-minded, reasonable men, that they should be permitted to make such proper investigation to ascertain the truth, so that the man in custody might either be discharged or brought before a magistrate as soon as is reasonably practical for a hearing. *The question of whether the detention of the accused be for an hour, or a day, or for five days, is not the deciding factor since inherently any detention for any period of time, no matter how short, may be classed as coercive.* (Italics ours.)

VII.

FURTHER REFERENCE TO DUE PROCESS OF LAW UNDER THE 14th AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

In MISSOURI v. LEWIS, 101 U. S. 22, 31, Mr. Justice Bradley said:

> "The 14th Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line. On one side of this line there may be a right of trial by jury and on the other side no such right. Each State prescribes its own mode of judicial proceeding."

The 14th Amendment, by parity of reasoning refers to that law of the land in each State which derives its authority from the inherent and reserved powers of the State, exercised within the limits of these fundamental principles of liberty and justice which lie at the base of our civil and political institutions, and the greatest security for which rests in the right of the people to make their own laws and alter them at their pleasure.

In the recent case of TOWNSEND v. BURKE, Warden, U. S. Supreme Court, No. 542, October Term, 1947, in an opinion delivered June 14, 1948, Mr. Justice Jackson referred to McNABB v. U. S., 318 U. S. 332 in the following language:

> "The plea for relief because he was detained, as he claims, unlawfully is based on McNabb v. United States, 318 U. S. 332. But the rule there applied was one against use of confessions obtained during illegal de-

tention and it was limited to federal courts, to which it was applied by virtue of our supervisory power. In this present case no confession was used because the plea of guilty in open court dispensed with proof of the crime. Hence, lawfulness of the detention is not a factor in determining admissibility of any confession and if he were temporarily detained illegally, it would have no bearing on the validity of his present confinement based on his plea of guilty, particularly since he makes no allegation that it induced the plea."

And as to HALEY v. OHIO, 332 U. S. 596, as follows:

"Petitioner also relies on Haley v. Ohio, 332 U. S. 596, in which this Court reversed a State court murder conviction because it was believed to have been based on a confession wrung from an uncounseled 15 year old boy held incommunicado during questioning by relays of police for several hours late at night. Even aside from the differing facts, that case provides no precedent for relief to this prisoner since, as has been said, no confession was used against him, and he does not allege that his pleas of guilty resulted from his allegedly illegal detention."

The petitioner in the instant case was afforded all his constitutional rights. His trial was in accordance with the long established criminal procedure of the courts of Oyer and Terminer of the Commonwealth of Pennsylvania. As Mr. Chief Justice Maxey of the Supreme Court of Pennsylvania said in his opinion at (R. 313):

"Anyone with experience in the administration of criminal law who reads the answers Turner made to the questions put to him will readily conclude that the statements he made to the officers were not those of a coerced or scared witness but that they were the statements of a man who had committed a murder and whose

recital of its details was clear and explicit. The teller of the gruesome story of this double murder was obviously drawing on his memory and not on a fear-fired imagination. His narrative dovetailed so accurately with the physical facts surrounding the crime and with the story told by his accomplices that there can be no reasonable doubt of the story's truthfulness."

And further on in his opinion (R. 319):

"Anyone believing Turner's later assertions that he had been coerced into making his incriminating statements about the commission of these murders would be too credulous to be safely entrusted with any part in the realistic work of administering the criminal law with justice both to the accused and to society."

Mr. Justice Maxey in his discussion of the matter continued (R. 320):

"On the other hand, for a court to hold that a confession made by a well fed and decently cared for prisoner after he has been held in custody for a few days without counsel or contact with friends and after he has been questioned a few hours every day by police officers in reference to a crime of which he is suspected, is inadmissible as being a coerced confession would be unrealistic and impractical. Such a judicial holding would result in a vast increase in the already too large number of felons who go unpunished and are free to prey upon law abiding citizens. These enemies of society naturally endeavor to commit their crimes where there are no witnesses except themselves and their victims. When the victim is killed the murderer feels himself safe. Fortunately for society, criminals soon become possessed of an impulse to disclose their guilty secrets."

A CONSIDERATION OF RECENT FEDERAL SUPREME COURT DECISIONS AND THEIR APPLICATION TO PETITIONER'S CASE.

ASHCRAFT v. TENN., 322 U. S. 143 (1944).

It was uncontradicted that Ashcraft had been held incommunicado for thirty-six hours, during which time, without sleep or rest, he had been interrogated by relays of officers and investigators. That was held by the U. S. Supreme Court to be "inherently coercive."

In this case of Petitioner Turner, neither he nor his two accomplices were ever questioned for more than a few hours at a time, nor were they ever denied adequate food or rest. They neither asked for nor were they denied counsel. Their conflicting and untrue statements had to be first checked and then brought to their attention and then checked again. With their numerous details, this consumed time. Their detention of itself was not coercive, and many times this high Court has said that questioning of persons suspected of crime by the authorities is not improper.

LISENBA v. CAL., supra,
WAN v. UNITED STATES, 266 U. S. 1.

LYONS v. OKLA., 322 U. S. 596.

This case is exactly in point with that of Petitioner Turner. This high Court there held:

> "Where the evidence as to whether there was coercion is conflicting, or where those inferences may not fairly be drawn from the admitted facts, the question whether a confession is voluntary is for the triers of the fact." (p. 602).

It is contended that in the Petitioner's case as in the Lyons case, the instructions of the Trial Judge to the jury

fairly raises this question of fact and did not deny to the Petitioner any right under the 14th Amendment to the Federal Constitution, to which he was entitled. He was tried in accordance with the long established law and in accordance with the decisions and opinions of the Pennsylvania Supreme Court, during the two and quarter centuries of its existence." (R. 314).

"The voluntary or involuntary character of a confession is determined by a conclusion as to whether the accused at the time he confesses is in possession of "mental freedom" to confess to or deny a suspected participation in a crime."

Lyon's second confession was held voluntary, whereas this Petitioner Turner, made confessions or admissions on three distinct occasions: first in his own writing, signing the confessions of his two accomplices as a witness; then admitted his participation in open Court under oath; and lastly, at a re-enactment of the crime at the scene, heard his confederates describe it in detail and said he had nothing to say.

BROWN v. MISS., 297 U. S. 278 (1936) (Murder);
LEE v. MISS, 68 S. Ct. 300 (1948) (Rape).

Both Brown and Lee were adolescents, whereas Petitioner is mature, and characterized by the trial Judge as a "smart, clever criminal." (R. 276-R. 282). Brown and Lee both were ignorant and untutored, threatened and abused by white officers and officials of whom they were in great fear. The authorities did not question the evidence that showed the confessions were obtained by coercion.

In Petitioner's case, his allegations of brutality are weak and not credible. His assertions are denied absolutely.

CHAMBERS v. FLA., 309 U. S. 227.

This was a situation in which defendant was threatened with mob violence and the confession obtained under circumstances that obviously inspired terror.

There was not the slightest suggestion of any such an

occurrence in Petitioner Turner's case. He had every legal right that can be accorded to a defendant in this Commonwealth. The questioning of Turner was not such as would inspire terror in him or his confederates.

HALEY v. OHIO, 68 S. Ct. 302.

Haley was a fifteen year old boy, questioned in the dead of night by police officers without surcease.

Petitioner was never interrogated more than a few hours at a time, and never after midnight by his own admissions at trial, and he was fed and allowed adequate sleep. (R. 118-R. 125, inclusive).

MALENSKI, et al. v. N. Y., 324 U. S. 401.

The defendant was arrested, stripped, held incommunicado in a down town New York City hotel, and his arraignment was purposely delayed. All those facts were admitted by the prosecution which attempted to justify them.

Turner was never subjected to any cruel treatment, and his arraignment was not purposely delayed but only because of the necessity for the police officers to check upon the verity of his statements and those of his accomplices. When, and only when, their inconsistency was evident to him and them, did they start to tell the truth.

LISENBA v. CALIFORNIA, 314 U. S. 219.

The "rattlesnake" case. Prolonged questioning by officers is not of itself conclusive as to coercion, and, like the later MITCHEL v. U. S. case, supra, illegal detention must of itself bring about the confession to violate the 'due process of law' clause of the Constitution.

McNABB v. U. S., 318 U. S. 332 (1943).

This was a trial in Federal District Court and the decision of the U. S. Supreme Court was based upon its power to prescribe rules of evidence, and to regulate the admission

in Federal Courts of confessions and the trial procedure to be followed by those tribunals. Illegal detention by Federal authorities was held to be coercive.

U. S. v. MITCHELL, supra, clarified this decision to the effect that "the illegal detention of an accused person will invalidate his confession only when the detention itself acts as an inducement in the procuring of the confession."

Reference is here made to an illuminating discussion by Peter A. Dammann in The Journal of Criminal Law and Criminology including the American Journal of Police Science, Vol. XXXVIII, No. 6, March-April, 1948 at page 627 upon Recent Federal Court Decisions on the "Admissibility of Confessions" as follows:

"RECENT FEDERAL COURT DECISIONS ON THE ADMISSIBILITY OF CONFESSIONS.

The Inherent Coercion (Ashcraft Case) Rule.

'In *Haley v. State of Ohio*,[1] a fifteen year old negro confessed to a murder after having been questioned for five hours by Ohio police officers 'in relays of one or two each.' The trial court admitted the confession in evidence, along with some other rather substantial proof of defendant's guilt. His conviction was affirmed by the Ohio appellate courts. The United States Supreme Court, however, in a 5-4 decision reversed the conviction because the majority of the Court found that the 'undisputed evidence suggests that force or coercion' was employed by the police interrogators, thus constituting a violation of the due process clause of the Fourteenth Amendment. The undisputed evidence relied upon by the Court was the fact that the fifteen year old defendant had been questioned about five

[1] 68 S. Ct. 302 (1948).

hours by five or six police officers 'in relays of one or two each.' These circumstances the majority of the Court considered as suggestive of force or coercion. The use of the test of 'suggestion' of force and coercion imparts the same notion as did the Court's previous expression of 'inherent coercion' which was employed in the *Ashcraft* case.[2] In other words, what the Court did in both the instant case and in the *Ashcraft* case was to make a psychological appraisal of the interrogation and then decide whether it had a *tendency* to coerce a confession. The effect of the interrogation on the particular defendant was of no prime importance, nor did the Court concern itself with the trustworthiness of the confession. It was sufficient if the circumstances merely 'suggested' coercion.

The *Haley* case is another illustration of an apparent effort on the part of the United States Supreme Court to compel state law enforcement officers to employ what it considers higher standards of interrogation practices. This the Court could not do directly because of the absence of supervisory power comparable to that which it has over lower federal courts and federal officers, but the same attempt is practically available by extending the Court's interpretation of due process to prohibit 'inherently coercive' or 'suggestively coercive' police practices.[3]

Inconsistent Defenses Regarding Evidence of a Confession

Does an accused person lose his right to contend that a confession was coerced because of his testimony that the confession was in fact never made?

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[2] Ashcraft v. Tennessee, 322 U. S. 143 (1944).

[3] For an analysis of the recent series of United States Supreme Court cases on confessions, in which the above stated conclusion is reached, see Inbau, F.E., Lie Detection and Criminal Interrogation (2d ed., 1948) 150-162.

In *Lee v. State of Mississippi*,[4] a seventeen year old negro was accused of assault with intent to rape. At his trial the prosecution offered in evidence the testimony of two police officers regarding an alleged oral confession obtained by them from the accused. Objection was made by the defendant to the admissibility of the confession on the ground that it had been secured by force. In a hearing out of the presence of the jury, defendant testified that he had been threatened prior to making the confession, and his testimony to that effect was uncontradicted. At this preliminary hearing, and later on during the trial, he also testified that he did not at any time admit that he committed the crime. His trial resulted in a verdict of guilty. In affirming the conviction the Mississippi Supreme Court said that if the accused had not denied having made the confession at all the case probably would have been reversed (because of his uncontradicted testimony during the hearing by the court on the admissibility of the confession), but that the conviction must be affirmed because 'one accused of crime cannot be heard to say that he did not make a confession at all, and at the same time contend that an alleged confession was made under the inducement of fear.'

Upon appeal to the United States Supreme Court the Mississippi court's decision was reversed on the ground that the defendant's denial of making the confession did not preclude him from asserting his constitutional right to due process of law. The Court was of the opinion that the defendant's denial of the confession 'went only to the original issue of whether he actually made the confession,' and the defendant still had the right to show that if a confession was actually made (as the police testified) he did so because of the coercive methods of his interrogators.

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[4] 68 S. Ct. 300 (1948).

The Delayed Arraignment (McNabb Case) Rule

The 'civilized standards' rule for federal law enforcement interrogators, as originally stated in the *McNabb* case,[5] seemingly required the rejection of confessions in any federal cases in which the officers neglected to comply with the statutory duty to take the arrested person before a committing magistrate 'forthwith' (or 'immediately,' or 'without unnecessary delay'). Subsequently the rule was modified somewhat by the Supreme Court in the *Mitchell* case[6] which held that the *McNabb* case exclusionary principle would be invoked only when the confession was 'induced by the illegal detention,' and not in a situation such as in the *Mitchell* case where the confession preceded the illegal detention. Even after the *Mitchell* case some uncertainty still existed as to the effect of illegal detention of this sort on the admissibility of confessions. The still prevailing confusion upon this point is illustrated in the recent case of *Boone v. United States*,[7] a decision of the United States Court of Appeals for the District of Columbia, the same court which in the *Mitchell* case had interpreted the *McNabb* case decision of the Supreme Court as requiring a nullification of an otherwise voluntary confession whenever illegal detention was involved. In the *Boone* case, the defendant was arrested about 9 o'clock on a Saturday morning, placed in a police showup about 11 o'clock, at which time he was identified by his robbery victim, and then for about twenty minutes he was questioned by the arresting officer. He was also again questioned about 5 o'clock that afternoon for twenty or twenty-five minutes, and later, between 9 and 10 p. m. the defendant requested to talk to the arresting officer and confessed his guilt

[5] McNabb v. United States, 318 U. S. 332 (1943).

[6] United States v. Mitchell, 322 U. S. 65 (1944).

[7] 164 F. (2d) 102 (1947).

on that occasion. The next day (Sunday), at about 1 p. m., the defendant surrendered to the same officer the money proceeds of the robbery, which the defendant had concealed in his shoe. Defendant was not arraigned until Tuesday morning. At his trial he denied making the confession. He was convicted and upon appeal his counsel contended that the illegal detention rendered the otherwise voluntary confession inadmissible in evidence. The Court of Appeals, in sustaining the trial court's ruling in admitting the confession, said: 'Counsel's interpretation of the McNabb case accords with the view taken by us of that case in our later decision in the Mitchell case. But on appeal to the Supreme Court our view was rejected and the Supreme Court itself interpreted its language in the McNabb case wholly contrary to the position now taken by counsel for appellant in this case. In the Mitchell case the Supreme Court said, as it had said in the McNabb case, that inexcusable detention for the purpose of extracting evidence from the accused is both wrong and unlawful, but pointed out that while this is true, detention, standing alone, does not affect the admissibility of the confession except where it appears that the disclosure is induced by it. In short, that unlawful detention, without more, does not require rejection of a confession otherwise admissible and that is this case.'[8]

PETER A. DAMMANN."

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[8] For a detailed discussion of the delayed arraignment (McNabb case) rule, see Inbau, **op. cit. supra** note 3 at pp. 162-169.

CONCLUSION

This was a brutal killing, not of one man but of two, in the perpetration of robberies. The petitioner played the dominant, major role. It was his hand that wielding the iron sash weight bludgeoned these two men to their deaths.

The judgment of the Supreme Court of Pennsylvania should be affirmed.

Respectfully submitted,

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APPENDIX TO APPELLEE'S BRIEF.

IN THE

COURT OF OYER AND TERMINER

FOR THE COUNTY OF PHILADELPHIA, PENNSYLVANIA.

COMMONWEALTH
v.
CLARENCE LOFTON.

June Sessions, 1946.
No. 646.
Charge: Murder.

Room 453, City Hall, Philadelphia, Pa., Friday, January 31st, 1947.

Before: HON. EDWIN O. LEWIS, J.; HON. JOSEPH SLOANE, J.; HON. VINCENT A. CARROLL, J.

PRESENT:

COLBERT C. McCLAIN, Esq., Assistant District Attorney, for the Commonwealth.

G. VON PHUL JONES, Esq., and W. WYCLIF WALTON, Esq., for the Defendant.

DISCUSSION.

(Stenographer's Note: Judge Carroll was not on the bench at the commencement of the following proceedings but took his place at the point indicated in the transcript of testimony.)

THE COURT: Are you ready, Mr. Jones?

MR. JONES: Yes, sir.

(The defendant was brought to the bar of the court, where his counsel conferred with him.)

COURT CRIER BEASTON: Clarence Lofton, do you want to withdraw your plea of not guilty to this bill of indictment charging you with murder in causing the death of Frank Endres? Do you wish to withdraw that plea?

THE DEFENDANT: Yes.

COURT CRIER BEASTON: And plead guilty generally?

THE DEFENDANT: Yes.

MR. McCLAIN: If your Honors please, in this case, on December 15th, 1945, three men—one named Aaron Turner, known as "Treetop," another one, Jasper Johnson, also known as "Fats" and "Playboy," and this defendant, Clarence Lofton, went to the premises 355 North 2nd Street in the city and county of Philadelphia. Aaron Turner was armed with a short piece of pipe, which has been referred to as a sash weight, and he entered the store occupied by

the Ace Broom Company, together with Jasper Johnson. The small man in the store, Frank Endres, was met first by Aaron Turner, and his skull was crushed by this sash weight in the hands of Turner, and while he was lying in the floor, Jasper Johnson robbed him.

In the conspiracy to commit this robbery, this defendant, Clarence Lofton, was placed outside as a look-out man.

After Endres' skull was crushed and while he was being robbed by Jasper Johnson, the other man in the store, Charles Simmons, came running in and Aaron Turner also crushed his skull with the sash weight and robbed him.

The three men ran away then and divided the proceeds of the robbery. As far as the Commonwealth has been able to ascertain, sirs, Lofton did not know that these murders were being committed inside the place, although he was a part of the conspiracy to go there and rob. After the robbery was consummated and, of course, before the two victims died, Clarence Lofton, not knowing whether they were alive, or probably not knowing what had gone on in the store at the time, took part of the proceeds of the robbery.

We will show your Honors the facts. Lieutenant Kelly is here. We have three signed confessions—not only a confession from Clarence Lofton but one from Jasper Johnson and one from Aaron Turner which Clarence Lofton also witnessed.

I am informed by counsel for the defendant that the prisoner will agree that Frank Endres, upon which bill of indictment he has pleaded guilty generally, this man died two or three days after the commission of this assault upon him, which was an assault committed in the perpetration of a robbery.

Do you agree that the Commonwealth has proved the death of Frank Endres, and that the autopsy made by the coroner's physician showed that he died from a blow upon the head?

MR. WALTON: Yes, we will agree that he died.

JUDGE SLOANE: Didn't Endres die right there in the factory?

MR. McCLAIN: No, sir. He died in the Hahnemann Hospital on the 17th of December, two days later.

The Commonwealth will show to you, sirs, that this was a homicide in the commission of a robbery, and under such circumstances, under the law of Pennsylvania could be nothing less than murder in the first degree. This defendant or this prisoner, being part of the scheme to rob and acting as the look-out man, is just as legally responsible for the acts of the others as if he had done it himself. While there is no legal difference, we can say there is one slight moral difference. He did not know the assaults were taking place and he was on the outside of the premises. Under those circumstances, plus the fact that Lieutenant Kelly, in charge of the Homicide Squad of the Philadelphia Police Department, informs the district attorney's office that Lofton has been of assistance to them in other matters, other murders here in the City of Philadelphia—he gave them information that helped them to solve these murders—and under those circumstances, if your Honors do determine that this murder in the first degree, then the district attorney's office would feel constrained to recommend that the lighter penalty of life imprisonment be inflicted instead of the death penalty

JUDGE LEWIS: Mr. Assistant District Attorney, must we not have three judges to hear this?

MR. McCLAIN: I think under the circumstances, even the prisoner himself will agree that the testimony taken at this trial ——

JUDGE LEWIS: Which trial?

MR. McCLAIN: This one here, at this hearing, be sub-

mitted to a third judge. I think under the circumstances that will be sufficient.

JUDGE LEWIS: What leads you to that conclusion?

MR. McCLAIN: The case of the Commonwealth vs. Shole in 325 Pennsylvania.

JUDGE LEWIS: May we have that book?—because we do not want to put Judge Sloane to the trouble, nor would I want it myself, in duplicating or repeating this hearing later. It might be better to have a third judge now.

MR. McCLAIN: Well, sir, the testimony will be very brief.

JUDGE LEWIS: Mr. Beaston, could we ask you to surrender your duties here for a few minutes and see if you can see Judge Carroll and ask him, with our compliments, to come up and sit with us? If Judge Carroll is not available, perhaps Judge Gordon might be available. Meanwhile Judge Sloane and I will read this report.

MR. JONES: If your Honor please, according to this case, which I referred to the Assistant District Attorney—of course, the custom has grown up here to consider the word "court" as construed to mean more than one judge, but this decision holds that the word "court" means one judge as well as a court en banc, and it dispels that idea of requiring three judges. Of course, we know in this county it has been the custom, but the custom doesn't have to be followed where there is no occasion for it.

JUDGE SLOANE: It is a rule of court.

MR. JONES: We will waive that rule of court. We are anxious to get through with it.

(At this point Judge Lewis spoke and directed that his remarks be off the record.)

MR. JONES: May I suggest to your Honors, then, that in this case you will not be burdened with the requirement of determining what the grade or degree of the crime is? We all know it is fixed by the act. This man participated in this robbery, therefore he is guilty of first degree. The only question that comes before you is, What is the punishment to be? Capital punishment or life imprisonment? Therefore, the only question your Honors will pass upon is what penalty will be imposed, which can be done by one or two judges as well as by three.

JUDGE SLOANE: Very recently Justice Jones, in the case of Commonwealth vs. Jones, said that a man cannot plead guilty to murder of the first degree.

JUDGE LEWIS: He can only plead guilty to murder, and the court must fix the degree, and that presupposes, under the rule of court, a court consisting of three judges. I think we had better wait a few minutes and get a third judge. Furthermore, a third judge may help us a great deal.

By the way, has Lofton any prior criminal record?

MR. McCLAIN: Yes, sir, he has a very long record.

(At this point there was a recess in the hearing of this case while the court proceeded to other business. At the resumption of the hearing of the case of Commonwealth vs. Lofton, the entire court (Lewis, J., Sloane, J. and Carroll, J. were on the bench).

JUDGE LEWIS: Mr. McClain, Judge Carroll is here now. He can stay only for about five minutes and then he will have to leave and return later. We will go on with the testimony until Judge Carroll has to leave.

Discussion

(At this point there was a conference of the full court.)

JUDGE LEWIS: Judge Carroll will sit at the beginning of the hearing and he will then have to leave, but he will participate in the disposition of the case. Is that agreeable to you and your client, Mr. Jones?

MR. JONES: I did not hear your Honor.

THE COURT (JUDGE LEWIS): Judge Carroll and Judge Sloane will sit with me at the outset of the hearing but Judge Carroll, by reason of a prior engagement, must leave in a few minutes and will return as soon as he can. It has been decided in the conversation of the three judges that Judge Carroll will read what occurs in his absence and will participate in the decision. Is that satisfactory to you?

MR. JONES: Yes.

MR. WALTON: Is that satisfactory to you, Lofton?

THE DEFENDANT: Yes.

MR. McCLAIN: The defendant himself agrees.

COMMONWEALTH'S EVIDENCE.

MR. McCLAIN: I think we have already agreed for the record that the corpus delicti—the defendant agrees, in view of the two prior trials—Commonwealth vs. Aaron Turner and Commonwealth vs. Jasper Johnson—that the corpus delicti is admitted, that Frank Endres came to his death by a crushing of the skull by blows inflicted on him on

the 15th of December, 1945, at the premises 355 North 2nd Street in the city and county of Philadelphia, and that he died in the Hahnemann Hospital on December 17th, 1945 and that a post mortem performed by Doctor William S Wadsworth, showed the cause of death to be a crushing of the skull. Is that agreed to by the defendant?

MR. WALTON: Yes.

JUDGE CARROLL: That sounds like Commonwealth vs. Jones.

MR. McCLAIN: Very similar, sir, except this was a homicide committed in the perpetration of a robbery.

DETECTIVE LIEUTENANT JAMES A. KELLY, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. Tell their Honors about the death of Frank Endres in the plant of the Ace Broom Company—, or, rather, about the beating which was inflicted upon him on December 15th. 1945, and which resulted in his death two days later in the Hahnemann Hospital

A. Shall I review ——

Q. Just tell about where and when the defendant was arrested and about the robbery and the injuries that were inflicted upon Endres and Simmons and when they died. briefly and to the point.

(At this point Judge Carroll left.)

A. At about 5 p. m. on December 15th, 1945, a patrolman trying the doors at 355 North 2nd Street in the city of Philadelphia, a broom factory known as the Ace Broom Factory, entered the place because of the fact that the door was open, and upon entering the room, just inside the doorway, he found the bodies of two men, both apparently alive at the time, lying on the floor, one of the men with some movement to his body and the other body was unconscious. These men were later identified as Frank Endres and Charles Simmons. Frank Endres was a man 63 years of age. He was a broom maker, employed at the factory. Charles Simmons was the owner of the factory. He was also a man up in years. He was 62 years of age—past normal middle age.

These two men were taken to the Hahnemann Hospital, treated there and detained, and subsequently died. Frank Endres died on December 17th, 1945, I believe, and Charles Simmons died a couple of days after that.

Q. I think it was December 21st, 1945.

A. Endres was on the 17th and Simmons was on the 21st. On or about May 19th, 1946, an investigation was started by myself, along with the detectives working for me, relative to another murder in the city of Philadelphia, and during the process of the investigation, this defendant here was taken into custody, along with nine or ten other defendants. So the investigation continued on until June 8th, at which time this particular case of homicide was separated from the others. During this time in our custody, he did make a statement pertaining to this particular homicide.

Q. I show you a statement, Lieutenant Kelly. Is that one that Clarence Lofton, this prisoner, made in your presence?

A. That is the statement he made in my presence relative to this particular homicide.

Q. And is it signed by the defendant, Clarence Lofton?

A. It is signed by the defendant, Charles Lofton, in the

presence of the two other defendants, Jasper Johnson and Aaron Turner, and read by all three and signed by all three.

Q. On each page?

A. On each page.

Q. Did you also get a statement from Jasper Johnson in the presence of this prisoner, Clarence Lofton, and Aaron Turner?

A. Yes, I did.

Q. Was that signed by Jasper Johnson?

A. It was.

Q. Was it witnessed by Clarence Lofton, this prisoner, and Aaron Turner?

A. It was.

Q. On each page?

A. On each page and at the conclusion.

Q. Did you also, Lieutenant Kelly, get a statement from Aaron Turner, the third man, in the presence of this prisoner, Clarence Lofton, and Jasper Johnson?

A. I did.

Q. And is that witnessed by Clarence Lofton and Jasper Johnson, as well as being signed by Aaron Turner?

A. It is.

Q. On each page?

A. On each page and at the conclusion.

Q. Will you just briefly give their Honors a resume of these statements and what happened at the Ace Broom Factory at 5 p. m. on that afternoon?

A. On the afternoon of December 15th, 1945, Clarence Lofton, together with Jasper Johnson and Aaron Turner, met in a saloon in the vicinity of 12th and Bainbridge ——

JUDGE LEWIS: Why not let the defendant tell us? It would be better to have the defendant tell us.

MR. McCLAIN: Very good, sir. I have just one other question.

BY MR. McCLAIN:

Q. Lieutenant Kelly, following the signing of the statement, or during the time they were signed, was a magistate's hearing held?

A. It was.

Q. Before Magistrate Williams?

A. Before Magistrate Williams.

Q. And at that time were these three defendants—Lofton, Turner and Johnson—before the magistrate in your presence?

A. Yes, they were.

Q. Was Mr. D. Barlow Burke there, representing the District Attorney's office?

A. Yes, sir.

Q. Did Jasper Johnson and Clarence Lofton make voluntary statements in front of the magistrate, after being warned by Mr. Burke?

A. They did.

Q. In your presence did you hear Mr. Burke say, "Do any of you men want to say anything this morning? I want to warn you in advance that anything you say may be used against you in court, and that you don't have to say anything if you don't want to. I understand, however, that you have made statements to the officers and signed those statements. Jasper Johnson, you have made a signed statement to the officers?"

Jasper Johnson answered, "Yes."

Question by Mr. Burke: "Do you want to say anything this morning?"

And Jasper Johnson answered, "Yes, sir."

Now, Lieutenant Kelly, was Jasper Johnson thereafter sworn and did he make a statement substantially in conformity with the one he had signed or did sign in the detective bureau?

A. He did, and he corroborated the statement of Jasper Johnson.

Q. This defendant corroborated ——

A. Yes.

Q. But first Jasper Johnson made a statement before the magistrate and then later Clarence Lofton, this prisoner, was sworn?

A. That's right.

Q. And did you hear Mr. Burke say to this defendant, Clarence Lofton, "You have been told that anything you say may be used against you, and that you don't have to speak unless you want to. However, I'm going to give you the opportunity of speaking if you want to. You have just heard the story of Jasper Johnson. Anything you can add to that?"

And did this defendant say, "No, sir, I haven't anything to add to it"?

A. Yes.

Q. (reading) "Were you there when these events happened?"

Answer, "Yes, sir. He just about covered everything. I was there and was standing outside watching."

A. Yes.

Q. And then he was asked whether he corroborated what Jasper Johnson had said under oath, he also being under oath, before the magistrate, and did he answer, "That's right"?

A. That's right, sir.

MR. McCLAIN: I should like to submit the notes of testimony that were taken at the magistrate's hearing before Magistrate Williams on June 8th, 1946, in this matter. I suppose you will agree to the notes? They are signed by the stenographer.

MR. WALTON: No objection.

(The complete transcript of proceedings before the magistrate will be found copied at the end of the testimony in this case.)

CROSS-EXAMINATION.

BY MR. WALTON:

Q. Lieutenant Kelly, which one of these three men did you pick up first?

A. Clarence Lofton.

Q. And on the basis of what information did you pick up the other two?

A. Well, I would say that Clarence Lofton corroborated the information that I had originally, and due to that corroboration, why, I carried through with the investigation.

Q. Isn't it a fact that Clarence Lofton told you who had participated in this crime and gave you information on the basis of which you picked up the actual participants?

A. Well, Clarence Lofton, after—his participation with me, in cooperation with me, was that when the man—when the other men were apprehended, rather, Clarence Lofton did corroborate the fact they were the right men, coupled together with the information that we had beforehand, before he was even arrested, and thereafter was helpful to us in that he tried all that was humanly possible to make the other two tell the truth in the matter and to ask that they come in and cooperate and make a statement in the case.

Q. You did not arrest him on suspicion of this crime when he was first arrested?

A. He was arrested for something else.

Q. He was arrested for something else?

A. Yes.

Q. And you found out about this afterwards?

A. Yes.

Q. How long afterwards?

A. Well, Clarence was arrested, I believe, on the 24th of May. I would say probably around the latter part of May was—I would say around June 1st.

Q. He was arrested five months after this crime?

A. Beg pardon?

Q. He was arrested five months after this crime?

A. Yes, sir.

Q. Do you know whether he knew at that time that these two men were dead?

A. Pardon?

Q. Do you know whether he knew at that time that these two men were dead?

A. Well, they weren't dead at that time ——

Q. I mean at the time he was arrested, do you know whether he knew at the time he was arrested ——

A. I doubt it. I don't think Clarence is one that reads the papers—unless he might have been informed by either of the other two defendants. At the time of his arrest I think he did state that he didn't know that the men had died.

Q. In other words, so far as your information as to the actual occurrence down there goes, there was nothing to indicate that he had any reason for believing that there had been any assault in the broom factory, is that correct?

A. I won't go that far and say that. I mean, I don't know what went on in their minds or what their actual conversation was immediately afterwards.

Q. But as far as you know, he did not know they were dead at the time he was arrested?

A. That's right.

MR. WALTON: That is all.

RE-DIRECT EXAMINATION.

BY MR. McCLAIN:

Q. At the time of Lofton's arrest, and the subsequent arrests of Jasper Johnson and Aaron Turner, was your bureau investigating other murders in the city of Philadelphia?

A. Yes, sir.

Q. In which the police were interested to know whether or not this defendant and Jasper Johnson and Aaron Turner were participating? The other murders?

A. Yes, sir.

Q. And for that reason, to follow out the avenues of information and the statements that were given to you by this defendant and by the others, it was necessary to hold them for possibly five or six days; is that correct?

A. Yes, sir.

Q. And among these murders that were being investigated by your bureau was what is known as the murder of Mr. Kornfield by Ewell, Mumford and Smith?

A. Yes.

Q. And was it your information that these men were sort of a gang in South Philadelphia?

A. They were a gang that were committing the types of crime that prevailed in all of these cases; they all followed the same trend, and from the information I had, Clarence Lofton was part of that gang.

Q. And did he give you information that helped you to in some way solve the murder of Mr. Kornfield?

A. Yes, sir.

MR. McCLAIN: That is all.

RE-CROSS EXAMINATION

BY MR. WALTON:

Q. You did not have any information that he participated in the Kornfield murder in any way?

A. No, sir, I know definitely he did not.

Q. Who was the ringleader of this group of Turner, Johnson and Lofton?

A. This particular group was Aaron Turner.

Q. Turner was the master mind of the group?

A. The investigation showed that Aaron Turner was the dominant head of practically all of them, and this particular weapon that he used in this case was a constant companion to him. He was quite a gambler and quite a gambling cheat and he carried this what they describe as a sash weight at all times.

MR. McCLAIN: That is the Commonwealth's case, sirs.

THE COURT: Will the defendant testify?

MR. McCLAIN: Yes, I believe they are going to put him on.

JUDGE LEWIS: Put him on, Mr. Jones.

DEFENDANT'S EVIDENCE.

JUDGE LEWIS: I understand, gentlemen of counsel, that the defendant pleads guilty now and wants to tell the whole story of his participation?

MR. JONES: Yes, sir.

JUDGE LEWIS: Very well. Let him be sworn.

CLARENCE LOFTON, the defendant, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

BY MR. WALTON:

Q. How old are you, Clarence?
A. 34.
Q. Where were you born?
A. New Orleans, Louisiana.
Q. When did you come up north?
A. Latter part of 1940.
Q. How much time did you spend in school, Clarence?
A. Not any.
Q. Not any? What did you do before you came north?
A. Always driving trucks, farm work.
Q. Where did you learn to drive a truck?
A. In Redbay, Florida.

BY JUDGE LEWIS:

Q. That is the sugar cane country?
A. Yes.

BY MR. WALTON:

Q. What did you do after you came up here?
A. I worked two years and six months in Maryland, in a powder plant.
Q. Where was that?
A. Elkton, Maryland.
Q. When did you come to Philadelphia?
A. During the time I was working in the powder plant, the end of June.

Q. The end of June of what year?

A. 1940.

Q. On December 15th, 1945, tell the court what happened between you and Aaron Turner.

A. I was in the saloon drinking at the time. He walked in and asked me, he wanted me to go somewhere with him.

BY JUDGE SLOANE:

Q. Who is "he"?

A. Turner. I was in there awhile and we walked out together.

BY MR. WALTON:

Q. Where were you?

A. 12th and South.

Q. In a saloon?

A. Yes. From there we went to 12th and Bainbridge. That was where he picked up Johnson.

Q. You went with him?

A. Yes. We came on back to South Street, went up South to 2nd, from 2nd on up to Callowhill. When we got to Market Street I asked him where he was going. I said, "Let's take a trolley." He said, "No, we ain't got much further to go now."

Q. What did he say about where you were going?

A. He didn't tell me definitely.

Q. Did he tell you what you were going for?

A. No, he just told me to come and go with him, he had a job to do.

Q. Had you gone with him before under his instructions?

A. No, sir.

Q. What happened after you got to 2nd and Market?

A. He told me we didn't have much further to go, and so we walked on. We got up to Callowhill Street. He told

me to watch outside, they would be out in a few minutes. So I waited outside and they come out.

Q. Outside of what?

A. Out of the building.

Q. What kind of building?

A. I didn't pay very much attention to it. It was a little small building. When Johnson come out, right behind him was Turner and I come out behind him.

Q. You weren't in the building?

A. No, sir.

Q. Did you know what went on inside?

A. No, sir, I didn't.

Q. Did you see them inside?

A. No, sir. From the position I was in I couldn't see inside.

BY JUDGE LEWIS:

Q. Where were you outside?

A. I was about as far from the building as from here to where you are sitting, as good as I can judge.

Q. About eight or ten feet from the building, on the sidewalk?

A. Yes.

Q. Were you in front of the place there where the broom factory was?

A. No, I wasn't in front of the building at all; I was that far from the building, at least.

Q. To the south or to the north?

A. Well, to the north.

Q. Up beyond the other part of the building?

A. Yes.

BY MR. WALTON:

Q. Towards Callowhill Street?

A. Yes.

Q. On the same side of the street?
A. Yes.

BY THE COURT (JUDGE LEWIS):

Q. What were you watching there for? For the police or something?
A. No, sir. They just told me to stand out there and watch for them.
Q. You were the watchman?
A. Yes.

BY MR. WALTON:

Q. What were you watching for? Officers?
A. They didn't tell me that. If anybody started in, to whistle for them.
Q. Anybody started in where?
A. Into the building.
Q. What time of the night or day was this?
A. I know I got—around five, five-thirty.

BY JUDGE LEWIS:

Q. Five or five-thirty on a December afternoon?
A. As near as I can guess.
Q. Was it daylight or dark?
A. It was dark—around dusk.

BY MR. WALTON:

Q. Were there lights on in the building?
A. I don't believe they were—yes, I believe they were I'm not sure.
Q. Did you look in through the windows after they went inside?

A. No, sir, I didn't get up to the building.

Q. Did you hear any noise while you were watching?

A. I didn't hear any noise.

Q. What did you see or hear while you were watching?

A. I didn't pay much attention to anything.

Q. What were you watching for?

A. In the meantime they told me to stand watch, if anybody started in to whistle.

Q. That is all you knew about what they were going to do?

A. Yes, sir.

Q. What did you talk to them about on the way up there?

A. They didn't tell me definitely. I didn't think I was going—they said they had a job to do where he could get some money. I didn't know they was going to participate in no murder or nothing.

Q. Was either Turner or Johnson armed, to your knowledge, during that walk?

A. The only thing, Turner had this paper. What was in it I didn't know personally.

Q. What kind of a piece of paper?

A. Piece of newspaper.

Q. What?

A. Newspaper.

Q. Flat or rolled up?

A. It was rolled up, but I didn't pay close attention to it, what was in it.

BY JUDGE SLOANE:

Q. Who had the newspaper?

A. Turner.

BY JUDGE LEWIS:

Q. Where did he carry it, Lofton?

A. He had it—he stuck it in his pocket when we left 12th and Bainbridge. What was in it I don't know.

Q. What pocket did he stick it in?

A. I think in his right front pocket.

Q. Right front pocket?

A. Yes.

Q. Do you mean down the side?

A. Yes.

BY MR. WALTON:

Q. How long were they inside while you were out watching?

A. As near as I can guess, fifteen or twenty minutes.

Q. What happened when they came out?

A. Johnson came out running, right behind him was Turner, and I struck up behind them.

Q. They were running?

A. Yes.

Q. Did you run with them?

A. Yes.

Q. Where did you run to?

A. We went on up to Callowhill Street.

Q. What happened?

A. We took off and went to walking.

Q. Tell the rest of the story.

A. That is all about ——

Q. Where did you walk to?

A. Went to 8th and Callowhill, went in there and bought some drinks. We left there and come back to South Philly, 12th and South. I left them there.

Q. You left them then?

A. Yes.

Q. Did you ever meet with them again after that?

A. No, sir.

Q. You went back to work the next week?

A. Yes, sir.

BY JUDGE LEWIS:

Q. Where did you work, Lofton?
A. I was working out at the Gulf oil refinery. Then I was put out of there and I worked at 112 Dock for Al Pollet.
Q. What did you do down there?
A. I was sorting and re-packing tomatoes.

BY MR. WALTON:

Q. Before you left them, did they tell you anything about what happened while they were inside?
A. Only thing they says, there was one lick passed—it was them talking, but I didn't figure there was any killing in it.
Q. What did they say, if you remember?
A. Something about several blows but I don't know what they was.

BY JUDGE LEWIS:

Q. Something about several blows?
A. About one terrible blow.
Q. One terrible blow?
A. Yes.

BY MR. WALTON:

Q. Did Turner have his rolled up newspaper with him when he came out?
A. I didn't pay much attention. I don't think he did.
Q. Did either of them have anything in their hands, as far as you noticed?
A. No.

BY JUDGE LEWIS:

Q. How much money did you get?
A. I had $87.
Q. Who gave you that $87?
A. Turner.
Q. Where were you when he gave it to you?
A. A little before we got to 8th and Callowhill.
Q. As you were walking along the street?
A. Yes.
Q. He divided up the money?
A. Yes.
Q. How much did Jasper Johnson get?
A. I don't know.

BY MR. WALTON:

Q. Do you know how much Turner himself had?
A. I don't know.

BY JUDGE SLOANE:

Q. While you were standing outside this broom factory, did you hear any noises inside?
A No, sir, I didn't hear nothing at all.
Q. Did they afterwards tell you what had happened, either one of them, Turner or Johnson?
A. No, sir; only thing they spoke about was about the blow.
Q. About a blow?
A. Yes.

BY MR. WALTON:

Q. When did you first learn that these two men were dead, Clarence?

A. After I got arrested.
Q. Who told you?
A. I think it was Lieutenant Kelly.
Q. That was in May?
A. Yes.
Q. Did you know before that that anyone had been injured or that there had been a fight?
A. No, sir, I did not.
Q. You did not have any conversation with Treetop or Johnson after you separated?
A. No, sir.
Q. Were you working all that time?
A. Yes, sir, I was.
Q. You were working when you were picked up?
A. Yes, sir.
Q. Are your parents living?
A. My father is living. My mother is dead.
Q. Where does your father live?
A. New Orleans.
Q. Does he know about this?
A. No, sir.

CROSS-EXAMINATION.

BY MR. McCLAIN:

Q. Lofton, on this day Aaron Turner told you he wanted to go some place to get some money, didn't he?
A. Yes, sir.
Q. How was he going to get the money?
A. He wasn't definite about how he was going to get it.
Q. Well, you saw him with the sash weight in his pocket, though, didn't you?
A. What was in the paper I don't know.
Q. You saw him wrap it up?
A. I said it was wrapped up. I don't know what was in it.

Q. What did you think you were standing outside for of the Ace Broom Company when they went inside? What were you going to do?

A. Nothing I was going to do. I wasn't going to do nothing.

Q. You were the look-out man?

A. Yes.

Q. If anybody went in, you were to whistle?

A. Yes, that was all.

Q. You knew they were going inside to do something?

A. Yes.

Q. And when they came out running, you knew they had done something?

A. Yes.

Q. So you ran with them?

A. Yes.

Q. Then they gave you $87?

A. Yes.

Q. You knew they had robbed the place, didn't you?

A. Yes, sir, but I didn't know there was no murder.

Q. You didn't know any murder was committed but you knew they had robbed?

A. Yes.

Q. And after you got down to the detective bureau after your arrest, you made a clean breast of everything, didn't you?

A. Yes, sir.

Q. You told the detectives the truth, didn't you?

A. Yes, sir.

Q. You signed your name to this statement, didn't you, after Detective O'Mahoney read it to you?

A. Yes, sir.

Q. It says on here, "The foregoing statement was read to me by Detective O'Mahony and it is true: I can sign my own name but that is all." And did you sign your name?

A. Yes.

Q. On each page of your statement?

A. Yes.

Q. You heard these statements that Aaron Turner and Jasper Johnson made, didn't you?

A. Yes.

Q. And you signed their statements?

A. Yes.

Q. When you made your statement you made it of your own free will, is not that right?

A. Yes.

Q. What is that?

A. That's right.

Q. Nobody forced you to make it?

A. No.

Q. When you went down before Magistrate Williams, it was in open court, just like this, wasn't it?

A. That's right.

Q. You were there and you heard Jasper Johnson tell what had happened?

A. That's right.

Q. And when they asked you—the district attorney, Mr. Burke, told you that you did not have to talk if you did not want to?

A. Yes.

Q. But you could if you wanted to, and anything you might say would be used against you? You remember that, don't you?

A. I remember.

Q. And notwithstanding that warning he gave you, you did talk?

A. That's right.

Q. You were sworn before the magistrate?

A. Yes, sir.

Q. And you told the magistrate in general that everything Jasper Johnson said was true?

A. That's right.

Q. Well, was everything Jasper Johnson said true at the magistrate's?

A. Yes, sir.

BY JUDGE LEWIS:

Q. So far as you know?
A. Yes.
Q. You weren't inside the building?
A. No, sir, I wasn't inside the building—so far as I know.

BY JUDGE SLOANE:

Q. When you were in the station house, what station house were you in?
A. 15th and Snyder.
Q. Was Turner with you?
A. No, sir.
Q. Was he in another station house?
A. Not at the time. When they got us together, that was here in City Hall.
Q. Well, did you sleep in the same cell with Turner?
A. No, sir.
Q. While you were in the City Hall here with Turner and Johnson, did the police do anything to Turner or Johnson?
A. Not that I know of, sir.
Q. You did not see anything?
A. No, sir.
Q. While they were with you?
A. No.
Q. They treated them properly, is that it?
A. As far as I know.
Q. As far as you saw, is that correct?
A. Yes.

BY MR. McCLAIN:

Q. Well, you said you made a voluntary statement. How were you treated?
A. I was treated decent.

MR. McCLAIN: That is all.

BY JUDGE LEWIS:

Q. Just a minute, Lofton. You have quite a bad record, haven't you?

A. Yes, sir.

Q. You have been arrested before for robbery, haven't you?

A. Yes, sir.

Q. You were on a burglary and robbery that took place at 714 Bainbridge—was it? Do you remember a case where you broke holes in the wall and went upstairs and took twenty dollars from a cash register and one hundred dollars from a cash box? Were you in that?

A. I was.

Q. That charge is still pending against you, isn't it, or has it been tried?

A. I haven't been tried.

Q. You have not been tried on that?

A. No.

Q. You were arrested in 1944 in Philadelphia for robbery by strong arm, a man named David Woolridge, 38th and Jackson, in the B. and O. barracks?

A. That's right.

Q. You pleaded guilty to that?

A. Yes.

Q. You were sent to the county prison for from one to three years by Judge Oliver. Do you remember that?

A. Yes.

Q. Then you served six months in 1943 for having a large knife in your possession?

A. Yes.

Q. You pleaded guilty to that?

A. Yes.

Q. Down in Louisiana you were arrested quite often, weren't you?

A. Yes, sir.

Q. Once for robbery, and sent to the state prison at Baton Rouge?

A. That's right.

Q. Then again for train riding and loitering. Material witness in a murder. Tell us about that. That was in 1940 at New Orleans. What kind of a case was that? Robbery?

A. No, sir.

Q. What was it, a fight among colored people?

A. A fight.

Q. Bridgeville, Delaware, you were in some trouble—disorderly conduct. In Wilmington you were twice arrested for driving other people's cars.

A. Well, I had their consent.

Q. You had consent?

A. Yes.

Q. Well, you got fifteen days on one and twenty-five dollars fine on the other, in 1943, didn't you?

A. Yes, sir.

Q. You were arrested in Wilmington for violation of the draft act and turned over to the Marines. Were you in the Marine Corps?

A. No, sir.

Q. That probably is U. S. Military. Were you in the Army?

A. No, sir.

Q. Why not?

A. I don't know, sir. I done lost my draft card then.

Q. You lost your draft card?

A. Yes.

Q. You were in one other robbery in Philadelphia last year—1313 South Street, a restaurant. Do you remember that?

A. Yes, sir.

Q. Were you on that robbery?

A. I was.

Q. You were with Sherman Whaley and Willie Lee Smith?

A. Yes.

Q. You took forty-five dollars from a man named Horace Lee, proprietor of the restaurant—you took forty-five dollars from the cash register?

A. Yes.

Q. Did you take it?

A. No, sir, Whaley got the money.

Q. Whaley got the money and divided it up?

A. Yes.

JUDGE LEWIS: You have a bad record. You would have been better off if you had been sentenced to a longer term than you got. Is there anything else?

BY JUDGE SLOANE:

Q. There is no doubt that Aaron Turner was the man, with Johnson, that went into that place. We want the full truth, now.

A. I gave it to you, all of it.

BY JUDGE LEWIS:

Q. Well, it is true that Turner and Johnson were up there, is it?

A. Yes.

Q. Turner is the man that had this weapon, so-called, in his pocket?

A. Yes.

Q. He was the man that came out and divided the money?

A. Yes.

Q. You are not lying about it?

A. No, sir.

MR. WALTON: If your Honors please, the issue obviously is not whether this man participated in this crime, but in mitigation I think it might be well to point out that it is clear that he had no idea that this crime was going to be different in character from those with which he was familiar, perhaps, as his record shows.

As Mr. McClain pointed out, he has a history of robberies and he was familiar with a group of men who were participating in robberies, but he has no record of having participated in robberies that resulted in killing, and there is nothing in this case to indicate he had any thought there would be any violence of that nature. He went on a Saturday afternoon into a neighborhood which is normally deserted, and it was as reasonable for him at the time to expect that these men were rifling a deserted establishment as it was to expect that it was defended by two men who would be assaulted in the course of the robbery, and there is no evidence whatever that he knew anything about the intention of Turner to kill, if killing became necessary, or even that he knew that a killing had occurred or that any assault of any kind had become necessary in the carrying out of the robbery, because even in the burglary of a deserted warehouse, for example, the men committing it get away as fast as possible after the burglary is completed, and there would be nothing in that circumstance, either, to indicate that he was charged or could be charged with any knowledge of the actual conditions of the assault.

So that while technically, and under I think the Doris case Mr. McClain relies on, the Supreme Court has said that the circumstance of being associated in a crime make all equally guilty, I think that there is a distinction, in that in that case all of those men were equally ready to commit a killing, and the fact that one of them was in the hands of the police—which perhaps was the thing which prevented him also from killing the bank guard ——

JUDGE LEWIS: That was the Olney Bank robbery case?

MR. McCLAIN: Yes, sir.

JUDGE LEWIS: Were all the conspirators in the Olney Bank case armed—separately armed? That I do not remember.

MR. McCLAIN: That I do not remember, your Honor. I know that the policeman who was killed in that case was on a milk truck chasing other of the bandits than Doris, because at the time of the death of this policeman, Doris had been in custody for twenty minutes and was approximately three miles away from the scene of the killing.

JUDGE LEWIS: Well, in a case that I had, where a Corn Exchange Bank messenger was shot and killed by one of three bandits subsequently electrocuted, the others pleaded guilty, and one got away and was subsequently killed up in Canada in a robbery. I sentenced one of them, Maloney, to twenty years because he confessed in that case and helped the police and he did not fire the shot, but he was in a car ready to drive them away. I gave him twenty years and he was released not long ago. The man who fired the shot was electrocuted. His name was Martin.

MR. McCLAIN: In this case, while legally there is absolutely no difference between Lofton on the one hand and Johnson and Turner on the other, there is a slight moral difference that may sway your Honors to feel that the lesser penalty is the proper one.

JUDGE LEWIS: You mean life imprisonment?

MR. McCLAIN: Yes. In view of the fact that Lieutenant Kelly tells me that Lofton has been of material aid in

the solving of other murders that the police could not have solved if it had not been for this aid, and the recommendation of our office, sirs, would be that the lesser penalty be imposed.

JUDGE LEWIS: Well, he might well be sentenced to be electrocuted on his record, plus this crime. There are several acts of robbery, but as far as the record shows, he never had a gun.

MR. McCLAIN: We have nothing to show that he was armed at all on this day. We do not know whether he was. He says he was not. If there had been any revolver or pistol in the hands of Johnson or T. ner, they would probably have used it. But Turner used this sash-weight to kill these two men and Johnson robbed one of them after the man was lying on the floor in a pool of blood.

JUDGE LEWIS: Well, Judge Sloane is familiar with the entire transaction.

JUDGE SLOANE: I suppose your argument is, as far as the definition of the crime, that it is murder of the first degree, and your argument goes only to the question of penalty?

MR. WALTON: Yes, your Honor, it is a question of the penalty.

JUDGE SLOANE: And you are addressing the argument that that is the recommendation made to the court by the district attorney?

MR. WALTON: And also on the question of mitigation. While he had reason to suspect that these men were going to commit a crime, there is nothing to indicate that he had

actual knowledge of that. Of course, we can assume that he was entitled to infer that there was a crime to be committed, but there is some distinction, I think your Honors will agree, between expecting the crime of burglary and the crime of murder to be committed, and the extent of his participation would be determined upon the extent of his knowledge—not what was in store for him or for the alleged conspiracy.

JUDGE LEWIS: As a matter of fact, these murders were entirely unnecessary, as far as any human being can see. All these brutes had to do was to knock the men down or stun them or something, but this big, brutal Treetop, who was in the office with this weapon and battered the skulls of the two men, was utterly without any reason.

MR. JONES: Not only that, but even if they had reported in some way to someone that two men had been injured, they probably could have been saved.

JUDGE LEWIS: I doubt if they could have been saved, because one man's head was so battered that his brains were protruding, according to the testimony in the Johnson case.

MR. JONES: But they lived for two or three days.

MR. McCLAIN: Endres lived for two days and Simmons lived for six days.

MR. WALTON: I understand they were taken to the hospital reasonably promptly, within an hour.

MR. McCLAIN: Murder committed in the perpetration of a robbery, even in the case of an accidental death, makes them liable to first degree.

JUDGE LEWIS: Oh, he might very well be sentenced to the electric chair, which was the jury's verdict in the Johnson case. It is just a question of whether under the circumstance that he did not enter the premises, he ought to be let off with life imprisonment. This case convinces me, Judge Sloane, that there ought to be more indictments of men with records such as this as habitual criminals. There ought to be a more serious penalty. A man who is an habitual criminal ought to be indicted as such and put away for life. A man who commits two or three robberies by strong arm ought to be put away for life. He ought never be allowed out of prison. He should be indicted as an habitual criminal with a penalty of say twenty to forty years and then we could get rid of some of these robbers who make a practice of it. Sooner or later a good many of them commit murder.

(The hearing was thereupon adjourned and the matter taken under advisement by the court.)

COMMONWEALTH'S EXHIBIT.

(The following is a copy of the transcript of testimony taken at the magistrate's hearing, referred to in the foregoing proceedings:)

IN THE
MAGISTRATES' COURTS OF PHILADELPHIA.

CENTRAL POLICE COURT.
(City Hall.)

COMMONWEALTH
v.
CLARENCE LOFTON, JASPER JOHNSON, AARON TURNER.

Homicide; Robbery; Burglary; Conspiracy to Commit Felony.

Philadelphia, Pa., June 8, 1946.

Before: HON. EDWARD WILLIAMS, Magistrate.

PRESENT:
D. BARLOW BURKE, Esq., A. D. A., for the Commonwealth.

Commonwealth's Exhibit

LIEUTENANT JAMES KELLY, sworn:

BY MR. BURKE:

Q. Lieutenant Kelly, did you make the investigation in the case of these three men?

A. I did.

Q. Proceed, please.

A. On December 15, 1945, at 355 North 2nd Street, at the Ace Broom Factory, an assault took place at about 4.45 in the afternoon, and as a result of the assault two persons died, one known as Charles Simmons and the other known as Frank Enders. Enders was 62 years of age and Simmons was 52 years of age. As a result of the investigation at that time, it was determined that in addition to the homicide, there was also a robbery involved, the amount of money taken we were unable to determine. So, as a result of a further investigation, these three defendants were arrested. Clarence Lofton, the No. 1 man, Jasper Johnson, the No. 2 man, and Aaron Turner, the No. 3 man. These men have made statements to the police, setting forth the part each one took in this particular case.

Q. Does each one admit in his signed statement that he was involved in the homicide?

A. They do, sir.

Q. Are the statements here, Lieutenant?

A. No, sir.

Q. Any further testimony from an officer?

A. No, sir.

MR. BURKE: Do any of you men want to say anything this morning? I want to warn you in advance that anything you say may be used against you in Court, and that you don't have to say anything if you don't want to. I understand, however, that you have made statements to the officers and signed those statements. Jasper Johnson, you have made a signed statement to the officers?

JASPER JOHNSON: Yes, sir.

MR. BURKE: Do you want to say anything this morning?

JASPER JOHNSON: Yes, sir.

JASPER JOHNSON, Co-Defendant, sworn.

BY MR. BURKE:

Q. Now, what's your name?
A. Jasper Johnson.
Q. Are you also known as "James Johnson," "Fats" and "Playboy"?
A. Yes, sir.
Q. What is your residence?
A. 620 South 13th Street.
Q. You have heard the testimony of Lieutenant Kelly before his Honor this morning?
A. Yes, sir.
Q. Do you want to add anything to that?
A. Yes, sir.
Q. Were you connected with the activities that Lieutenant Kelly testified to?
A. Yes, sir.
Q. Were you involved in the homicide of Charles Simmons and Frank Enders?
A. Yes, sir.
Q. What part did you play in that?
A. December 15th, at 12th and Bainbridge, Aaron Turner and Clarence Lofton came to 12th and Bainbridge and got me. "Treetop" said to me ——
Q. Who is "Treetop"?

A. Aaron Turner—said to me: "Come on, Fats, and go with me. I'm going to get some money." I said to Treetop, I said: "I don't mind going, but I don't want no trouble." He said: "There were no trouble. Come on." We goes to 12th and South from 12th and Bainbridge, and stopped between 5th and 6th at a hot-dog stand and gets a couple of sandwiches apiece. We leave there. We goes to 2nd Street. We goes to start, and I had been drinking and was beginning to get sick. So, Clarence said: "Treetop, if its much further, we'll catch a trolley." Treetop said: "We don't have much more to go, so we'll walk on down." So, we walked to 2nd and Callowhill. Treetop says to Clarence: "You wait on the highway." Treetop and I goes in the first door together. We goes in the first door together and gets on the inside. Treetop had a package in his pocket, and a pipe wrapped up in newspaper.

Q. A package? What kind of a package?

A. A piece of sash-weight wrapped up in paper, about eight inches long and about that round (indicating about one inch). We gets to the first door. Treetop gets ahead.

Q. Did you follow him in?

A. I follow him in. He gets one of the guys. The smallest guy he slugs. I don't know how many times he slugged him.

Q. Did you see that?

A. Yes, sir. After Treetop slugs him, I gets in his pocket and gets his wallet. I was trying to get it out of his hip pocket. I slings the wallet in the building, where I don't know. So, when I looks around, Treetop and this other guy is tusseling.

Q. You saw him tusseling with another man?

A. Another white man. So, after I got through mine, I looks around and said: "Let's go." So, I leave out running. Treetop follows.

Q. You mean you left the place?

A. I left running. Treetop follows. After Clarence sees us running, Clarence follows us.

Q. What was Lofton doing?

A. He was the watchout man. He never entered the building. So, we goes on down the street. We get near 8th and Callowhill, somewhere close by, I look at the money, I don't know exactly how much, it looks like $175.00.

Q. You testified before that you threw the wallet away?

A. I takes the money out before I threw it away. So, I takes $50.00. I hand the other to Treetop. Treetop gave Clarence some money. I don't know how much. So, after Treetop gives Clarence the money ——

Q. Did you see him give Clarence the money?

A. I saw him, but I don't know how much. I says to Treetop: "How much—what did you get off the other fellow?" He says: "Nothing." We goes to 8th and Callowhill and gets a couple of large drinks. Treetop goes in the bathroom and comes out. We catch an 8th Street trolley and go back downtown to 12th and South. We get a couple of drinks in there and goes from 12th and South to 12th and Bainbridge, where I met him, and get a couple more drinks and splits up there.

Q. Up until then you had been together?

A. That's right. The next what was said, Treetop said to me and Clarence: "Anybody gets arrested, you don't know me and I don't know you."

Q. Who said that?

A. Aaron Turner—"Treetop."

Q. Then what happened?

A. That's all. We split up.

Q. How about this second man in the room?

A. Treetop had him.

Q. What was he doing to him?

A. When I looked around, him and Treetop was tusseling.

Q. Did you see Treetop slug him?

A. I saw some blood.

Q. Did Treetop still have this object in his hand?

A. I'm not sure whether he had that sash-weight at that time or not.

Q. Did you see Treetop slug him, the second man?
A. That's right.
Q. Was the first man on the floor at the time?
A. Yes, sir, he was on the floor, and I was trying to get in his pocket.
Q. Was he lying on the floor when you three left?
A. Yes, sir.
Q. Anything else you can add?
A. No, sir.

CLARENCE LOFTON, Co-Defendant, sworn.

BY MR. BURKE:

Q. You've been told that everything you say may be used against you, and that you don't have to speak unless you want to. However, I'm going to give you the opportunity of speaking if you want to. You have just heard the story of Jasper Johnson. Anything you can add to that?
A. No, sir, I haven't anything to add to it.
Q. Were you there when these events happened?
A. Yes, sir. He just about covered everything. I was there, and was standing outside watching.
Q. You corroborate what he has said?
A. That's right.

AARON TURNER, Co-Defendant, sworn.

BY MR. BURKE:

Q. Do you want to say anything to His Honor?
A. No, sir.

Q. Can you add anything?
A. No, sir.
Q. You don't want to add anything. Do you agree with the testimony that these two men have given in Court?
A. Yes, sir.
Q. You corroborate their testimony?
A. Yes, sir.
Q. You say that it's true?
A. Yes, sir.
Q. You're not denying anything that they said?
A. No, sir.
Q. How much money did you get in this?
A. I don't know.
Q. About how much?
A. I would say $175.00.
Q. Did you divide up with the others? Was that $175.00 that which you, yourself, got out of the thing?
A. Yes, sir.
Q. Was that in addition to the $50.00 that one got and the $175.00 the other got?
A. No, sir.
Q. That's your share?
A. Yes, sir.
Q. You got $175.00 yourself?
A. Yes, sir.

CLARENCE LOFTON (recalled).

BY MR. BURKE:

Q. Will you tell his Honor how much you got out of this?
A. About $87.00 is what he gave me.
Q. That was given to you by "Treetop" Turner?
A. That's right.

Commonwealth's Exhibit

JASPER JOHNSON (recalled):

BY MR. BURKE:

Q. How much did you get?
A. $50.00.
Q. How much was in the wallet?
A. I estimated about $175.00. I wasn't sure.
Q. Whom did you get that from?
A. The first white fellow in the building he slugged. I passed it to Treetop.

MR. BURKE: Your Honor, I think a prima facie case of homicide, burglarly and robbery has been established against these three defendants, and I'm going to ask that you hold all three without bail for the action of the Grand Jury.

LIEUTENANT KELLY: I might add that there has been a Coroner's inquest in this matter, at which time the finding was that the deaths resulted at the hands of a person or persons unknown.

MR. BURKE: I think, your Honor, that these members of the Detective Division are to be commended for a very fine piece of detective work in cleaning up this mysterious murder. They ought to be commended for it, and I would like to go on record as saying it.

THE COURT: I think the same way. Without bail for Court.

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the hearing of the above cause, and that this is a correct transcript of the same.

(Sgd.) DAVID F. HOULIHAN, JR.,
Stenographer.

Discussion Between Lewis, J. and Defendant, Clarence Lofton

IN THE
COURT OF OYER AND TERMINER.
FOR THE COUNTY OF PHILADELPHIA, PENNSYLVANIA.

COMMONWEALTH,
v.
CLARENCE LOFTON.

June Sessions, 1946.
No. 646.
Charge: Murder.

Room 453, City Hall, Philadelphia, February 19, 1947.

HON. EDWIN O. LEWIS, J., Presiding.

PRESENT:
COLBERT C. McCLAIN, Esq., Assistant District Attorney, for the Commonwealth.
W. WYCLIF WALTON, Esq., for the Defendant.

THE COURT: Lofton, the three judges who heard your plea of guilty are agreed in adjudging you guilty of the degree that you should be adjudged, which is murder of the first degree, and accordingly I pronounce that judgment.

Having affixed the degree of your offense as murder of the first degree, it then followed that the punishment should

be agreed upon. The two judges who very kindly agreed to sit with me to dispose of the matter have likewise agreed with me that your punishment should be imprisonment for life, and accordingly fixed that punishment, sentencing you to imprisonment in the Eastern Penitentiary for life.

Now, is there anything you want to add to the record?

MR. WALTON: I have nothing, but may the defendant make a statement?

THE COURT: Yes.

THE DEFENDANT: I am very sorry I took a walk with them. I didn't know that there was to be any murder involved. Howsoever, I am very sorry it happened. If I knew it was going to happen, I wouldn't have been in with them. If I had known it, I would have given up my life to replace the ones that have been taken.

(Defendant adjudged guilty of murder of the first degree and sentenced to imprisonment for life in the Eastern Penitentiary.)